UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 21-30589(MBK)
	.	
	.	Clarkson S. Fisher U.S.
LTL MANAGEMENT LLC,	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
	.	
Debtor.	.	December 15, 2021
. . . . .	.	10:04 a.m.

TRANSCRIPT OF VARIOUS APPLICATIONS
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. DAN PRIETO, ESQ. AMANDA S. RUSH, ESQ. 2727 North Harwood Street, Suite 500 Dallas, TX 75201
For the Office of the United States Trustee:	Office of the United States Trustee By: JEFF SPONDER, ESQ. One Newark Center 1085 Raymond Boulevard, Suite 2100 Newark, NJ 07102
Audio Operator:	Wendy Romero

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd):

For the Debtor:	Otterbourg, PC By: MELANIE L. CYGANOWSKI, ESQ. 230 Park Avenue New York, NY 10169 Wollmuth Maher & Deutsch, LLP By: PAUL R. DeFILIPPO, ESQ. 90 Washington Valley Road Bedminster, NJ 07921
For the Official Committee of Talc Claimants:	Bailey & Glasser, LLP By: BRIAN A. GLASSER, ESQ. 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007 Genova Burns, LLC By: DANIEL M. STOLZ, ESQ. 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Brown Rudnik, LLP By: ROBERT J. STARK, ESQ. 7 Times Square New York, NY 10036
For Aylstock, Witkin, Kreis & Overholtz, PLLC:	Klee, Tuchin, Bogdanoff & Stern, LLP By: ROBERT J. PFISTER, ESQ. 1801 Century Park East, 26th Floor Los Angeles, CA 90067

* * * * *

THE COURT: Bear with me for technology.

You have absolutely no faith in me, do you?

All right. Again, good morning, everyone. This the LTL Management LLC matters, and as my law clerk is reminding me, let me start with some administrative matters.

Already, I'm going to -- I see an attorney I'm going to have to correct. So I had a conversation with Chief Judge Freda Wolfson. She cornered me in an elevator and said she heard some concerns raised by our marshals and CSOs about lawyers, distancing and mask wearing. And I assured her that I would remind everybody to be more vigilant lest all of a sudden we create a, yet a new ground for withdrawing the reference. We don't want all of a sudden, everybody on this side of the aisle will be ripping off their mask, hugging each other. It'll be a new strategy.

So please, unless you're speaking, and then by all means when you're speaking, take off the masks, but otherwise keep the mask on. Do your best. Obviously, counsel who are conferencing together, counsel who are traveling together and otherwise lunching together, I'm not going to say distance. That's kind of silly. But if we could put everybody in their own little group. But from others, try to distance yourself from others to the best you can. We'll try to accommodate.

We do have spillover, excess availability in other rooms. I don't think we need it today. The numbers are

reduced. So just be vigilant.

As far as appearances, as I've said, I don't need to go through appearances again. And each time, I have the dashboard from Court Solutions. I have lists. What I will ask you to do is when you're addressing the Court, either on Court Solutions, through Court Solutions, or here, please identify yourself and we'll be able to hopefully save time and move forward.

Let me start then. I have the agenda. And let me, I guess, hear from debtor's counsel. I know we have some educational materials. It's going to be school for a little while. We have some presentations on both sides of the aisle. So let me turn to debtor's counsel and see how you wish to begin.

MR. GORDON: Good morning, Your Honor, Greg Gordon, Jones Day, on behalf of the debtor.

We did confer with the other side, and I think we're in agreement that if it's acceptable to Your Honor, we would begin with those presentations. And I think Your Honor had indicated at the last hearing that you wanted us to keep them to 30 minutes.

THE COURT: I think that's reasonable.

MR. GORDON: And I think we're prepared to do that.

And then otherwise, I think there's been lots of meeting and conferring about the other matters on the agenda.

And I think for the most part we have resolutions or we've agreed to move some things, and we'll walk through that I think probably in the order that they appear in the agenda.

THE COURT: That would be fine.

MR. GORDON: And then the only other thing I think there is, we'd like to provide a status report on discovery. We obviously had the status conference with Your Honor on the 7th. There's been further communication with the two sides, or between the two sides about that. I know Mr. Glasser is here as well, and I think he probably wants to talk to the Court, but we'd like to do that at the appropriate time. Maybe at the end. We didn't talk about when we would do that, but --

THE COURT: I think that makes sense.

MR. GORDON: -- maybe at the end.

THE COURT: I'd welcome that.

MR. GORDON: Okay.

THE COURT: All right. So let's start the program.

MR. GORDON: So, Your Honor, I'm not sure exactly administratively how this is supposed to work since I don't have the clicker in terms of how to move the --

THE COURT: I defer to my law clerk.

THE CLERK: I will be used at your verbal command.

MR. GORDON: Well, that sounded pretty good. I should think about that for a minute.

All right, you can go to next slide, please.

THE COURT: And of course, I have on my monitor here. That's for the benefit of the courtroom.

MR. GORDON: And we appreciate the setup. I don't know if I noticed the screen the last time we were here, but we appreciate the Court assisting us with the mechanics of doing it this way. Thank you.

THE COURT: I've got great staff who know far more than I do.

MR. GORDON: Well, it certainly looks like they're great.

So, Your Honor, I think I can go through these relatively quickly.

So the first slide, I just wanted to sort of tell the Court from the debtor's perspective, what we view as the purpose of the case or what we view as the ultimate goal of the case. And for us, it's delivering a fair and equitable resolution of the current and future talc claims against the company and doing that for the benefit of all parties, including the claimants. And I'll come back to that, but we do feel strongly that this proceeding will benefit the claimants as well.

And kind of the flip side of that is, is that we're currently in a system, or we were in a system prior to the bankruptcy case that we believe was very inefficient for everyone, inequitable, created considerable uncertainty and

lots of delay. And I'll come back to that as well.

And so we think the opportunity to use the Bankruptcy Code to resolve these claims is to everyone's benefit. And of course, the ultimate goal is to establish a trust and a trust that would operate under procedures that would allow for claims, both current and future to be paid very efficiently, paid promptly, and most importantly, paid in an equitable manner, as opposed to what we've experienced in the tort system, where many claimants get nothing, some claimants get very, very large verdicts, but the majority literally get nothing.

And as we indicated to Your Honor at the last hearing, the debtor is prepared to begin negotiating as soon as possible, or as soon as the other side is ready for that.

Next slide, please.

So, Your Honor, this is a slide that just depicts the corporate history of the assets and the products that are at sort of the core of the claims that have been lodged against the debtor and, of course, its predecessors. But you know, J&J is a company Your Honor probably knows. I think it was founded back in 1887. Baby powder first was manufactured and sold in 1894. The company that -- you know, that was basically manufactured and sold by the company itself.

(Audio interference from Court Solutions)

THE COURT: Is that the zoom?

THE CLERK: I believe that's Court Solutions.

THE COURT: All right. I'll ask those on Court Solutions to remain moot -- remain mute, please.

Go ahead. I'm sorry.

MR. GORDON: No problem, Your Honor.

So in 1972, a division was created for this business for the baby products division. And then importantly, in 1979, there was a decentralization effort at Johnson and Johnson where it was decided that various divisions should be transferred out of Johnson and Johnson and moved into subsidiaries. And, in fact, this business, the baby products business, was moved in that way in 1979. It was moved into a subsidiary, Johnson and Johnson Baby Products Company. And that subsidiary, at the same time, also assumed the liabilities of that operating division. In other words, of that baby products operating division.

And then you'll see, there were a series of further transactions starting in 1981, one in '81, 1988, 1997, and then in 2015 that involved movements of these assets within the corporate structure, some renaming of entities and the like. You'll see that some of the assets were separated out. For example, in 1981, the baby products division was moved, or the company was moved, but not the diaper assets, or those assets were moved but not those. And, again, there were movements to other companies. There were assumptions of liabilities.

And then, ultimately, in 2015, you had another move where the existing company then was merged into an entity, McNeil-PPC, and then that entity was renamed Johnson and Johnson Consumer, Inc., and that's the JJCI, or the old JJCI that you've heard us refer to or you've seen in the papers.

Next slide, please.

So this is just an excerpt from the agreement for the transfer of the assets from J&J to the Johnson and Johnson Baby Products Company in 1979. And, again, this was part of that decentralization effort by the company at that time. And you'll see here the operative language that the subsidiary agreed to assume all the indebtedness, liabilities, and obligations of every kind and description, which are allocated on the books or records of J&J as pertaining to its baby division. And the subsidiary hereby covenants and agrees with J&J that the subsidiary will forever indemnify and save harmless J&J against all the indebtedness, liabilities, and obligations after said hereby assumed. So both an assumption of the liabilities, as well as an indemnity back to Johnson and Johnson with respect to the liabilities that were assumed.

Next slide, please.

Your Honor, you've also heard from time to time, I think, that as part of this litigation, there have been suits about the Shower to Shower product, a similar product more for adults. And here, this is just an excerpt from a 1986 annual

report that indicates that these products were also part of the Johnson and Johnson Baby Products Company and, ultimately, the liability for these products also ended up in old JJCI and, ultimately, was allocated to the debtor as part of the corporate restructuring that occurred in 2021.

Next slide, please.

Your Honor, this is something that we'll likely discuss in more detail in connection with the preliminary injunction matter, but there was a dispute between the parties as to whether or not there was an assumption of these liabilities or not. That's one of the reasons I did show you one of the excerpts from the agreement at issue. But this was another set of evidence that was placed before the court in North Carolina with respect to this issue. And that is that historically, all the costs related to the talc litigation have always been paid by old JJCI. And you'll see that that's reflected in general ledger entries. It's reflected in the way the accounting reserve, or the placement of the accounting reserve, which is in the consumer segment of the financial statements.

Go to the next slide, please.

And in particular, we have shown the Court an actual SAP journal entry with respect to actually the payment of the Ingham verdict. You may remember that was the one very large ovarian verdict that wasn't reversed on appeal, about $2.5

billion, and this is just an excerpt from a journal entry that shows that that amount was paid by JJCI, or old JJCI.

Next slide, please.

So, Your Honor, what the company was facing and what precipitated this bankruptcy filing by LTL, both the corporate restructuring and the bankruptcy filing was literally an explosion of cases that occurred primarily beginning in 2010. And you can see from the data that's on the slide, the substantial uptick in the number of cases that were being filed against the company. So in 2014, 46 ovarian cancer cases were filed against old JJCI. That moved up to nearly 5,000 in 2017. And then, to date, or through the petition date in 2021, and actually beyond, over 12,000 ovarian cancer complaints were filed against the company.

In the last five years alone, the company has spent $3.5 billion in indemnity payments. And it's anticipated, of course, that these cases are going to continue for decades. And, you know, this was manufactured until -- manufactured and sold until 2020. And we know from the asbestos world that there is a substantial latency period. And, in fact, Your Honor may have seen that Owens-Illinois filed bankruptcy not too long ago. Its asbestos product there, there was no manufacturing of it by Owens-Illinois after 1958, and it was --

THE COURT: Mr. Gordon, I'm just confused.

MR. GORDON: Sure.

THE COURT: The MDL has 38,000, roughly, cases. My understanding, only about 500 or so of those are meso cases. So how does that comport with 12,300?

MR. GORDON: Well, the 12,300 are just the number of ovarian cancer complaints that have been filed in 2021.

THE COURT: Oh, 2021 to date. I see. Okay.

MR. GORDON: Correct.

THE COURT: All right. My apologies.

MR. GORDON: And I'm sorry if I wasn't clear about that, Your Honor.

So in any event, due to the license latency period for mesothelioma and the alleged latency, long latency period for ovarian cancer, it was anticipated that we'd literally be looking at 40 to 50 to 60 years of continued litigation of these claims.

Next slide, please.

Now, Your Honor, I recognize that we're not here to debate science, but I did want to provide a few slides with a little background on this, sort of presenting at a high level the company's viewpoint on this. And, in particular, I wanted to raise it because the Committee spent a fair amount of time in its opening statement that was filed in this Court about arguing that science supports its position. And that's simply not true.

And you can see from this series of slides here, you

know, these various entities that have found no association between perineal talc exposure and an increased risk of ovarian cancer. And it's not as if these are all, by the way, old conclusions. You have one from the National Cancer Initiative 2021, the ACOG 2019, FDA 2014. You know, FDA said, "Did not find that the data submitted presented conclusive evidence of a causal association between talc use in the perineal area and ovarian cancer."

Next slide, please.

Same thing. There are various perspective government sponsored studies. And when -- this was something I learned, Your Honor, perspective is a study where you're taking people at a current period of time, taking women, and then looking forward in terms of what happens as opposed to a retrospective study where you have somebody who's already sick and is now contending that he -- or that she, I guess, primarily in this case, use the product. But here, you can see this was published in the Journal of the American Medical Association in 2020, probably the most prominent medical journal, over 250,000 participants, and the ultimate conclusion was no finding of association between the use of baby powder and an increased risk of ovarian cancer.

Next slide, please.

There's no U.S. public health authority that's concluded that cosmetic talc causes ovarian cancer. And you

can see here, we've added from the slide you saw before, the CDC is among that group, as well as the SGO. And the others I think were on the slide that you saw previously. So not a single one has reached that conclusion, Your Honor.

Next slide, please.

There have also been a number of studies that show no increased risk of mesothelioma from baby powder products as well. And these studies -- and again, I'm only going to spend a minute on these. These are all studies of miners who worked at mines from which cosmetic talc is produced. And you start with a study in 1976 which covered 1,514 miners and 478 millers who worked starting from 1921 through 1950. Found no cases of mesothelioma. It was updated in 1979. Still no cases of mesothelioma.

Then, you had a study in 2003 of almost 1800 miners and millers who worked at a mine and/or factory between 1946 and '95. Again, no cases of mesothelioma. Updated in 2017, no deaths from mesothelioma. And then, again, in 2021, after 74 years of follow-up, no deaths found among miners, millers from mesothelioma. And then there was further testing where there was no detection of asbestos in samples of talc taken from that mine.

Next slide, please.

Now, in our view, what's happened, or all the plaintiffs really have to offer, is what we would characterize

as junk science. Their primary expert has been Dr. Longo. And you can see from this order in the one case at the top, the court's view of his testimony. It was viewed to be practiced and to employ misdirection and evasiveness. It is at best disingenuous, not credible, and unsupported by any respectable community of scientists. And, in fact, Dr. Longo previously had testified that claims that cosmetic talc contained asbestos were an urban legend.

And then, most recently in a trial that just occurred, the van Clive (phonetic) trial, which you've heard referenced already in this case, Dr. Egilman, one of the experts basically testified to a jury that a telescopic image of space was in fact talc particles under a microscope.

Next slide, please.

So not withstanding the science, Your Honor, we've been, and were in a situation where, although the company was prevailing in the majority of cases, there was a lottery like aspect to the results in those cases. And, of course, the best example of that is the case I referred to earlier, which is the Ingham case that generated almost a $4.7 billion verdict. That was for 22 claimants. It was reduced on appeal, but it obviously wasn't completely reversed on appeal. And an effort to have that matter heard by the Supreme Court failed. Two of the justices actually recused themselves.

Then, you have the instance of large verdicts in some

of the single plaintiff mesothelioma cases. You can see the numbers ranging from 6 million to over 25 million. And then, in ones that are under appeal, you had verdicts ranging from 12 million to 120 million. Again, just a lottery like experience in the tort system, many claimants receiving nothing, the majority receiving nothing, and then some receiving literally astronomical numbers.

Next slide, please.

This is another depiction, Your Honor, of the results on the ovarian side. Again, showing initial jury awards. And you can just see the wide range of outcomes. You have the ones along the bottom that received nothing. There's a couple of mistrials in there as well. You can see the Ingham in there, I guess that's 2018. That number is in there. And, of course, that's the only one that wasn't fully reversed on appeal. All these other ones, all these other ovarian jury verdicts were reversed on appeal.

And, again, this, Your Honor, is why, in our view, the bankruptcy is beneficial to the claimants. This is a very inequitable situation. You know, put aside the debate over the science. You have this situation where the large majority of claimants literally get nothing, where a very small handful get an astronomically large number. Yet, if you were to compare the facts of those claims to each other, you would see that they're substantially similar. And, of course, if we can get

to a successful result in this case and establish a trust, that inequity will be eliminated both for current claimants and for future claimants.

Next slide, please.

This slide, Your Honor, just focuses on the verdicts themselves on the ovarian side. So you can see here 15 trials completed, you had seven defense verdicts, two miss trials. Then you had 1, 2, 3, 4, 5 verdicts that were reversed with the only one that remains standing, being the Ingham case, which again was reduced. And the reason, by the way, on Ingham, the numbers look different is that's per claimant. That's taking those verdict numbers that you saw on the prior slide and dividing them by 22.

Next slide, please.

And the same is true for the mesothelioma claimants as an earlier slide alluded to. This is just a more granular depiction of that. You can see the defense verdicts across the top. Then, you can see verdicts reversed on appeal, mistrials, and then you start to see situations where there was a plaintiff verdict under appeal or where an appeal was lodged and withdrawn. But, again, I mean look at the compensatory awards. They go from zero to 15 million to 26 million, a huge disparity. Same thing on the punitive side, from zero, you see 80 million, you see 105 million, 4 million. And it just, really all over the place.

Next slide, please.

And, you know, unfortunately, Your Honor, the MDL, which you've heard a lot about, it's just not the solution. And it's not the solution because, number one, its primary focus is on pre-trial issues, particularly, discovery issues. There were, prior to the bankruptcy case, a few bellwether trials that were scheduled, or tentatively scheduled. But from the perspective of the company those are of limited utility because the primary benefit of a bellwether trial is it provides information to the parties to see how a trial might play out.

Well, the company had already tried -- old JJCI had already tried 12 ovarian cancer cases by then. So from the company's perspective, that information was of limited use. And then, most importantly, the MDL doesn't encompass everything. It doesn't include meso cases. It doesn't include state court cases. They're all federal cases. And it doesn't include any future claims.

Next slide, please.

So from the perspective of the company, the situation it was in pre-bankruptcy simply was untenable. As Your Honor just mentioned a few moments ago, 38,000 pending ovarian cancer cases, 430 mesothelioma cases. And those, both ovarian cancer and meso cases were escalating at a significant rate. And, in fact, even post-petition, when we had the initial hearing with

Judge Whitley that did not receive the stay we were asking for, there were hundreds of cases filed in that interim period. And any one of those cases, as you can see from the prior slides, could result in a multimillion dollar or multi-billion dollar verdict.

And then, of course, in addition to that, you have the associated costs of defense, which are running from ten to $20 million per month. And as I indicated earlier, you're talking about latency periods that run for 50 years and more. So that's what we were confronting at the time. From the company's position, that was simply untenable, not only for the company, but it's, again, inequitable for the claimants as well.

Next slide, please.

So, Your Honor, there were -- you know, the company basically engaged in a number of efforts to try to resolve this liability outside of Chapter 11. I mean, obviously it was attempting to resolve them in the tort system. But in the tort system, ultimately, when you have a situation where the claims are increasing at such a rapid case and the costs of defense are so substantial, it's virtually impossible to continue to do that. In other words, it's virtually impossible to try to litigate every case. And think about it, too, from the perspective of the claimants, you have almost 40,000 -- excuse me -- claims pending. How many years is it going to take to

have those claims run through the tort system? I mean, you probably try 12 cases a year, maybe 15. They would take literally years and years, maybe decades, to have those resolved in the tort system.

So you had that. The other problem the company was facing is an inability to obtain review by the Supreme Court. And it's really the death knell of a cert petition when you have two justices who are conflicted. I mean, that's a huge problem in having cert granted. And it happened not only in Ingham, it happened more recently in one of the AG litigations that went up on a cert petition. Again, the same two justices recused themselves.

And, of course, the other issue with the tort system as Your Honor knows is that there's no way to obtain a global resolution in the tort system. You can't deal with future claims. You can't do that. You can just take these cases on a one-by-one basis. Obviously, there have been efforts in the past to see if these could be handled by some sort of class action or class settlements, and those have all been rejected by the courts. But the other avenue the company pursued as well, which I think Your Honor probably is aware of based on your review of the record, is that there were efforts by old JJCI and J&J to reach a settlement at least of a substantial majority of the claims in the Imerys case.

And those negotiations were very advanced. Lots of

progress was made. It was reported to the bankruptcy court by the claimants that, in fact, a settlement offer had been made in those cases. And I'm not going to comment on that except to say that that's one of the reasons we're very hopeful we can reach a settlement relatively early because of the progress that was made. But the bottom line in Imerys was that those negotiations failed. The agreement could not be delivered by the claimants. And there were legal hurdles to getting it done when you're not in bankruptcy yourself.

And so having attempted to resolve this through the tort system and basically being stymied in a number of ways, both due to the number of claims that would have to be litigated and then this kind of roadblock at the Supreme Court level, coupled with the fact that the negotiations were unsuccessful in Imerys, the company felt that it only had one alternative left and that alternative was to file for Chapter 11.

Next slide, please.

So, Your Honor, this is where the corporate restructuring came about. This is a slide that just attempts to depict graphically how that restructuring worked. It obviously had a number of steps. And I know Your Honor has read the record, so I won't belabor it. To me, what's of course very important about this transaction is the funding agreement. And I mean, the funding agreement, from our

perspective, is what demonstrates that there's no fraudulent conveyance here, that no harm has been done to these claimants. That's its intended purpose. And in here, it's not only a funding agreement from new JJCI, but you have Johnson and Johnson, the parent itself, who agreed to be jointly and severally liable on that up to the extent of the value of new JJCI. And the record from the PI proceeding reflects that the fair market value of new JJCI is approximately $60 billion.

THE COURT: Six-zero?

MR. GORDON: Sixty billion dollars.

THE COURT: Sixty. Okay.

MR. GORDON: That's in the record. That was elicited from John Kim, our chief legal officer on cross examination by the claimants.

Next slide, please.

So, Your Honor, I'm just going to comment on these next two slides just briefly. So there's been a lot of focus on the Texas divisional merger. There's been a lot of negative things that have been said about it. We're obviously aware and I'm sure Your Honor is as well, there's actually even legislation that's been proposed that would effectively outlaw it almost from a bankruptcy perspective. In other words, if -- I think it provided, if a company filed for bankruptcy within 10 years of having completed a Texas divisional merger, the case must be dismissed, I think is the way it reads.

And that's a gross over-reaction to the statute. And I put these two slides up to show that. The Texas divisional merger statute doesn't enable a company to do anything it otherwise could not do through different restructurings. And, in fact, in other cases, the same results have been achieved through different kinds of restructurings. So you'll see here -- and Mr. Huff wrote this article in 1989 and he was involved. And I'm sorry, I can't remember exactly what his role was with respect to this, but he was involved, as I understand it, with respect to the formulation of the bill.

But it says "Changes include provisions permitting a single corporation to adopt a plan of merger, providing a division of that corporation's assets and liabilities among two or more resulting corporations or other entities." Then, it goes on to say, "Traditionally, the transaction had to be effected through multiple steps utilizing common law conveyancing of assets, assumption of liabilities, and distributions to shareholders in connection with the merger. The new provisions will no longer require the many complications previously attendant to such transactions."

And if you go to the next slide, please.

Kind of a similar point here. "The amendments permitting these transactions directly through mergers reflects a recognition that because no significant substantive distinction between the two forms of transactions exists,

corporations and their shareholders can accomplish these transactions through a merger if a merger provides the most efficient or desirable means of accomplishing the transaction."

So this statute doesn't enable a company to do anything differently. And Your Honor may be aware that Owens-Illinois recently did basically the same thing through a holding company reorganization, but the result was the same. It ended up effectively separating the company into two pieces. And then, they had the equivalent of a funding agreement between the two. And Your Honor's probably aware that an agreement with the claimants was reached in that case, to fund the trust, and I understand a plan will be filed this month in that case.

A similar transaction occurred in the Garlock case with its parent CoalTech. And rather than using a divisional merger, it basically took its entity, spun assets out to a different entity, left a few remaining assets in, filed that entity, and then had what they call to keep-well agreement from the entity that it received the other assets. Same type of transaction, but a Texas divisional merger allows you to do that in ways that are simpler and more efficient.

And I did just want to come back and say there's obviously been a lot of rhetoric about the impropriety of this and about how the claimants have been harmed and the, you know, the fraud that's been perpetrated. But, you know, to my mind,

the exact opposite happened here. Considerable thought was given to how to do the transaction in a way that did not harm the claimants. And, in fact, in some respects, put them in a stronger position. Now, what it did allow the company -- what it did allow old JJCI to do was not put the entirety of its assets into a bankruptcy case. But I would submit, Your Honor, that's to the benefit of the parties as well, because all that would do is make the case more complicated, it would cause it to take longer, it would cost more money, there would be more constituents to be heard from, yet the claimants would be in the same position they're in today, which is their cases would be stayed and we'd be working together on a plan that would provide treatment for the claimants and in our view would be much more equitable, much more efficient, provide recoveries much more promptly than what their experience, or what they were experiencing in the tort system before the filing.

Next slide, please.

There's also been a lot of rhetoric about LTL being a bad co., it being a shell. And it's simply not. It's not accurate. It owns a subsidiary that has substantial value. It has a funding agreement that backstops its ability to pay these claims. And at its core, it ensures that the same assets that were available to pay claims before remain available now. Plus, it has the backing of J&J also as the parent company. And, of course, there was an agreement by J&J and new JJCI to

advance $2 billion under that agreement to be placed into a QSF, a qualified settlement fund, for the exclusive benefit for the claimants. Now, there's opposition to that. We're not going to address that today. We're going to push that off. But, again, the whole purpose of all of this was to set this up in a way that we thought would take off the table these concerns about the transaction and harm. But, again, a lot of thought was given to this, and in doing this, there was study done of developments in the other cases, the other similar cases, to come up with ways to, you know, to make this an even more beneficial transaction or one that certainly minimized any potential risk, or should have alleviated largely any concerns about what happens.

Next slide, please.

Now, what the restructuring did not do is it did not allow anyone to escape liability. The debtor is here. The claims are here. It didn't remove any assets. The same assets and paying power remain available. And there's been no ring fencing or quarantining of assets, at least not in the way that I think about it, Your Honor. To me, a ring --

THE COURT: Mr. Gordon, I've given some latitude. I don't want to -- we're not arguing the dismissal motion.

MR. GORDON: Okay.

THE COURT: I am sure I'm going to be hearing all of this again in February.

MR. GORDON: Fair enough, Your Honor.

THE COURT: Thank you.

MR. GORDON: I'll move on. Thank you.

THE COURT: Thank you.

MR. GORDON: Next slide, please.

So, Your Honor, I don't want to spend much time on this because, again, I know Your Honor is familiar with this. But this is the funding agreement, and I made, I think, a number of these points already. But it's literally as no conditions. That the funding's available under that we believe it's a fully enforceable agreement. It's not a loan. There's no obligation to repay it. It's a commitment by both new JJCI and J&J to backstop the obligation of, or any liability of LTL with respect to ovarian cancer claims or mesothelioma claims.

Next slide, please.

Qualified settlement fund. Again, I touched on this. you can see that there are qualified settlement funds in two of the other cases, or at least there was one approved in Bestwell (phonetic) at 1 billion. One is proposed in the Aldrich and Murray cases is at 270. It is irrevocable. It does provide for an independent trustee. And importantly, it does not cap the liability or attempt to oppose some sort of cap on the liability. That's not the purpose of it at all.

Next slide, please.

So, Your Honor, in our view, the case has a proper

purpose. These are just the quotes. Well, the first is a quote from Judge Beyer in Bestwall that she found that in the Bestwall case. And she makes specific reference to an asbestos or mass tort case. And she also made reference to the fact there's not a need for the company to be insolvent.

And then, I wanted to put up some information from the SGL Carbon case because I know that that's a case that the Committee has been heavily relying on. And I think it's important to note in that case that the court went out of its way to distinguish the circumstances in that case from other mass tort cases. And you can see Johns-Manville, Dow Corning, and AH Robins there.

Next slide, please.

We believe, Your Honor, as I said at the outset, a trust resolution here is more efficient than what was occurring in the tort system. And if you think about it here, and this is unlike asbestos cases, causation hasn't been established. In other words, you know, asbestos, I think it's become clear over the years, there's agreement, or the science supports that there is general causation between asbestos products and certain disease. That's not the case with these baby powder products or with talc. And that means that literally both the claimants and the company are having to retry causation in every single case, which is, from our perspective, very inefficient. And those efficiencies would be eliminated if we

can get to the point in this case, which we believe we can, of having a resolution that involves the trust. And, of course, the cost of administration of the trust are substantially less than the cost of litigating in the tort system.

Next slide.

And, again, you know, the point is you, you would have more equitable recoveries under a trust. You would have, and I'm sure Your Honor is familiar with this, you would have trust distribution procedures that would have established criteria for paying claims based on the characteristics of those claims. And the individuals who can demonstrate those characteristics would be getting amounts that are equivalent to others who have the same claim characteristics, which again is very unlike the situation in the tort system.

Next slide.

So, Your Honor, just to conclude, we're coming to this Court in good faith. Our singular goal is to resolve these claims, to do that on a basis that's equitable, that's efficient, and to do it as quickly as we can. And, again, as I said earlier, we believe that all parties will benefit, including the claimants because we don't think that the claimants benefit from being put through the stress and the delay and the uncertainty of litigation, particularly when they're losing the large majority of these cases, when instead, they would have the ability to simply fill out a trust form,

describe their claims, prove it up as required by the procedures, and recover.

And so, we are prepared to commence negotiations with the representatives, Your Honor, as soon as they're ready to go.

THE COURT: Thank you, Mr. Gordon. I appreciate the information.

And we'll bring up the presentation of the TCC.

MS. CYGANOWSKI: Good morning, Your Honor. Melanie Cyganowski, Otterbourg PC, proposed co-counsel for the Talc Claimants Committee.

THE COURT: Good morning.

MS. CYGANOWSKI: First, for the record, and it probably does not need to be said, but please do not accept our silence as conceding any of the theories or facts put forward by the debtor this morning. We obviously disagree and we will be presenting our views shortly.

At this time, Your Honor, I would like to take a few moments to introduce our Committee members. One of whom is personally present in the courtroom with the others appearing on Court Solutions. Those who were unable to attend did not do so either because of their own health issues or fear of COVID while traveling.

The Office of the U.S. Trustee has rightly called attention to the importance of active participation by

individual Committee members. I can personally assure the Court, as well as the Office of the U.S. Trustee, that our Committee members actively participate in our meetings and decision-making, notwithstanding any health or personal issues they may have. For these reasons and others, I would like to take a few moments to share their individual sagas.

The first to present is Alicia Landrum (phonetic). Alicia Landrum is represented by Leigh O'Dell and Ted Meadows of Beasley Allen law firm. Both Lee and Ted are present in the courtroom today. Alicia is present on Court Solutions. She is a single mother of two, who is employed as a practice manager at the Spartanburg Regional Medical Center. She was diagnosed with Stage 3 ovarian cancer of June of 2011 at the age of 39.

Alicia underwent extensive testing, scans, chemotherapy, and debulking surgery. She continues to undergo medical yearly monitoring and lives with the ongoing fear from the statistics that her ovarian cancer might return, as well as the financial burden associated with a cancer diagnosis. Alicia used Johnson and Johnson's baby powder as part of her feminine hygiene routine for approximately 25 years, applying the powder to her genital area on a regular basis. Her case is currently pending in the state court in St. Louis.

April Fair is represented by Mark Robinson, Jr., and Lila Razmara of Robinson Calcagnie, Inc. Mark and Lila are both present here in the courtroom today.

April started using Johnson and Johnson's baby powder in her peritoneal area around 1993 when she was 15 years old. She used it daily for almost 20 years. Unfortunately, she was unaware of any connection between ovarian cancer and the use of baby powder. April was originally diagnosed with ovarian cancer in 2010 when she was only 33 years old. At the time of her diagnosis, she had a four-year-old daughter. She underwent a hysterectomy and chemotherapy and she has remained in remission for several years.

Unfortunately, April experienced a recurrence in 2020 that required surgery to remove masses in her pelvis, bowell, abdomen, and colon followed by chemotherapy. She continues to be on maintenance therapy with Zejula. As a result of the necessary hysterectomy, April can no longer have children. And the chemotherapy has left her with persistent neuropathy, which has worsened over time.

She is in constant pain. So much so that she has been unable to remain -- or to return to work as a certified nursing assistant. And her daughter has sadly witnessed her mother's misery and suffering throughout her life as she has grownup.

Our third member of the TCC is Blue Cross Blue Shield of Massachusetts. Blue Cross and Blue Shield of Massachusetts, Inc., and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., together simply referred to as

Blue Cross and Blue Shield, are represented by Lyzzette Bullock, who is the Associate General Counsel, and Elizabeth Carter of Hill, Hill, Carter, Franco, Cole, and Black. Each of them are present on the Court Solutions today.

Blue Cross and Blue Shield has insured and/or administered self-funded health plans that have covered hundreds of plaintiffs who have filed personal injury lawsuits against J&J and JJCI for both injuries, including ovarian cancer and mesothelioma, caused by talcum powder products. Blue Cross and Blue Shield has not filed a direct action against the Johnson and Johnson defendants or intervened in a member's litigation as of this point, but they are impacted by the debtor's bankruptcy strategy the same way as any injured persons may be with respect to recovering medical expenses.

Our fourth member is Darlene Evans (phonetic) who is represented by James Onder and Cynthia Garber of OnderLaw, LLC. Jim Onder is present in the courtroom today.

Darlene is the mother of Erin who was diagnosed with Stage 4 ovarian cancer at the age of 38. Erin was a single mother of two beautiful girls. Sadly, Erin suffered for two years as she underwent chemotherapy before she passed. Darlene's daughter wanted, like all of us, to have a life and enjoy her children as they grew up. She wanted to see her daughters go on their first date, graduate, and walk down the aisle. Her youngest daughter was just 12 when Erin passed.

In Darlene's words, and I quote, "No mother should have to bury her child." And she lives with the weight of having introduced to her Johnson and Johnson's talc from the time she was an infant. As Darlene reflected upon her life, as a black American child, using Johnson and Johnson's baby powder made her feel like she had crossed a barrier. When she used the product, she became like the people in those commercials. Regardless of the color of her skin or what she had or didn't have, Johnson and Johnson's baby powder made her feel like she could be just like any other girl.

In her words, "I belonged. I was part of something bigger." Darlene appreciates that no one can put a dollar value on her daughter's life, but she believes in her fight to secure justice.

Our next member is Kellie Brewer. And Kellie Brewer is represented by Majed Nachawati and Darren McDowell of Fears Nachawati law firm. Majed is present in the courtroom today.

Kellie is a 60-year old mother of two and the proud grandmother who was diagnosed with Stage 4 ovarian cancer in September of 2000. Because of her diagnosis, Kellie endured multiple surgical procedures and countless sessions of chemotherapy, which have taken a toll on Kellie and her family, both physically, mentally, and financially. As part of her daily hygiene, a personal routine, Kellie used J&J's baby powder for more than 30 years. Prior to being diagnosed with

Stage 4 ovarian cancer, Kellie was healthy, vibrant, and enjoyed spending time with her husband, Tim, and their two children.

Our next member is Kristie Doyle, who is represented by Steve Kazan and Joe Satterley of Kazan, McClain, Satterley and Greenwood PLC. Steven is present on Court Solutions this morning.

Kristie is the widow of Dan Doyle who was born on November 29, 1970, and died of malignant mesothelioma in December of 2018 at the age of 48. His only exposure to asbestos occurred from his decades use of Johnson and Johnson's baby powder. Autopsy analysis demonstrated that talc and the exact type of asbestos documented in Johnson's baby powder was found in his lung and lymph tissue in addition to mica and aluminum's silicates, both documented ingredients in Johnson's baby powder.

Dan was happily married to Kristie and their only child, Ethan, who was just 14 years old when his father passed. Ethan was obviously devastated by watching his mentor and father suffer through a horrific battle with mesothelioma. In his deposition, Dan spoke candidly about the pain that he and his family had endured. His trial had been scheduled to start in May of 2020, but was adjourned due to COVID, rescheduled then for September, 2021. But once again, rescheduled to take place in April of 2022 in Santa Clara.

Our next member is Patricia Cook. Patricia "Patty" Cook is represented by Perry Weitz and Lisa Busch of Weitz and Luxenberg. Lisa is present in the courtroom today.

Patty is 58 years old. She is living with peritoneal mesothelioma. Patty was exposed to asbestos from her personal application of Johnson and Johnson's baby powder from approximately 1976 through 2001. She was further exposed to asbestos from applying J&J's baby powder to her two children during diaper changes from approximately 1996 through 2000. It's been almost a year since her diagnosis of mesothelioma.

At the time of her diagnosis, Patty had been married only one month. It was only days before Christmas in 2020. In February of this past year, in 2021, Patty underwent extensive surgery where she had multiple organs and tumors removed, followed by chemotherapy. The treatment which she receives has caused her to lose significant amounts of hair resulting in her needing to wear a wig at times when she is out in public.

As a certified personal trainer, she had always been physically fit and healthy prior to her mesothelioma diagnosis. She also enjoyed traveling with her husband. They have two children in their mid-twenties. Prior to the preliminary injunction in this case, Patty's case was nearing trial-ready status. Her case is pending in Middlesex County, New Jersey, and is in the process of expert discovery -- or had been. A trial date was scheduled for May of 2022.

Our next member is Randy Derouen, who is represented by Jerome Block of Levy Konigsberg LLP. Jerry is present in the courtroom today on his behalf.

Randy was born in Biloxi, Mississippi, in 1993 and is 48 years old. Randy was exposed to Johnson and Johnson's baby powder as an infant when his mother and grandmother used it during every butt diaper change and after bathing him. Growing up in a southern climate, Randy continued to use Johnson and Johnson's baby powder daily.

Randy was diagnosed with peritoneal mesothelioma in June of 2020 just as he was enjoying a successful career in the casino industry. Currently, Randy is battling devastating anemia from his chemotherapy treatments. He is often so weak that he needs to crawl to the bathroom. Within the past few weeks, he was hospitalized for four days where he received blood transfusions. His mesothelioma is so extensive that his chances of long-term survival are not high. He is not a candidate for surgery.

Randy's case is pending in the Superior Court of New Jersey in Middlesex County. Fact discovery has been completed. Expert's reports were due this past November, but delayed, obviously, because of the preliminary injunction in this case. His trial had been scheduled for February '22, but is now adjourned without a date.

Our next member is Rebecca Love, who is represented

by Michelle Parfitt and James Green of Ashcraft & Gerel, LLP. Michelle and Jim are both in the courtroom today. Rebecca is a dental surgeon and a retired Air Force officer. Rebecca received her doctorate of dental surgery degree from the University of Texas Health Science Center in San Antonio School of Dentistry.

In June of 1980 she then entered into active service in the United States Air Force. After her tour was completed she entered into private practice while also serving in the Air Force Reserve. While in the reserves Rebecca was called to active duty to serve our country as a dentist during Desert Shield and Desert Storm. She retired from Air Force Reserves in 2003.

While serving in the reserves Rebecca took a forensic dentistry course from the Armed Forces Institute of Pathology and received her forensic dentistry certification. In civilian practice she was a key member of the Fort Worth District Dental Society Mass Disaster Team that had the dubious task of performing dental identifications on 83 victims of the David Koresh Branch Davidian inferno in Waco, Texas in April and May of 1993.

In July of 2018, however, while on a women's retreat Rebecca discovered a walnut-sized lump in her right groin. Her VA physician immediately took steps for a radiology appointment for a CAT scan. This was followed by a lymph node biopsy under

general anesthesia, and three days later she learned she had stage 4 ovarian cancer with a 17-percent five-year survival rate. For over 43 years of her life Rebecca regularly used Johnson & Johnson's baby powder.

Tonya Whetsel is represented by Erik Karst, Doug von Oiste, and David Chandler of Karst, von Oiste, LLP. Doug is present on CourtSolutions.

Tanya is the mother of Brandon Whetsel, who passed away from mesothelioma three years ago. Brandon was diagnosed with mesothelioma in May 2017 at the age of 36. Brandon struggled through the next 18 months after his diagnosis, losing a hundred pounds, and ultimately passing away in November of 2018 at the age of 37. Brandon left behind Kristen (phonetic), his wife, his three-year-old daughter Avery (phonetic), his mother and stepfather.

Brandon's only known exposure to asbestos was talc. He was first exposed to Johnson & Johnson's baby powder as an infant when Tanya would use it on him when changing his diapers. Later in life Brandon used J&J's baby powder while playing basketball and baseball in junior high, high school, and thereafter.

This case was filed in Jackson County, Missouri and was scheduled for trial several times. Due to COVID the trial was delayed. They finally got a firm trial date in January of 2022, but, obviously, because of the pending preliminary

injunction this date will not proceed, either.

Our next and last member of the committee is Mr. William Henry, who I'm pleased to present to the Court is personally present.

Mr. Henry, would you please rise? And with him is his counsel, Mr. Christopher Tisi of Levin Papantonio Riferty (phonetic) -- Rafferty. I practice so much on the Italian name I forgot the other one. My apology.

Mr. Henry is the widower of Debra Sue Henry. They first met in 1973. They were engaged on their sixth date. William and Debra were married for more than 46 years until Debbie's untimely passing on October 22, 2020.

In addition to William, Debbie left behind four children and 11 beautiful grandchildren. Debbie was a longtime employee of Lakeside Junior High School in Clay County, Florida. She was extremely involved with the church. She and William attended as many overseas missionary trips as they could, and together they helped build three Native American bible colleges.

Debbie used Johnson & Johnson's baby powder with talc, as well as Shower to Shower, daily in some form or another literally her entire life. In October 2019 Debbie began to experience severe pain in her upper pelvic and abdominal regions. Following further medical workup, surgery, and pathological examination Debbie was ultimately diagnosed

with stage 3 high-grade serous carcinoma of the peritoneum, ovaries, and fallopian tubes. Debbie was BRCA negative and had no genetic predisposition for ovarian cancer. Sadly, she passed barely a year after her diagnosis.

While I appreciate that this is unusual, I would ask the Court for its indulgence since Mr. Henry traveled from Florida, if he might just say a few words.

THE COURT: I have no issue with that.

MS. CYGANOWSKI: Mr. Henry.

THE COURT: Good morning.

MR. HENRY: Good morning, Judge. I'll try to get through this.

MS. CYGANOWSKI: You can take the mask --

THE COURT: You can take the mask --

MS. CYGANOWSKI: -- off, Mr. Henry.

THE COURT: -- off as well.

MR. HENRY: As she said, I'm a widower still in love with his wife. Debbie and I were engaged when we were 16. We were engaged for one year. Forty-six years after our wedding on a Wednesday evening Debbie quietly asked me to let her go.

Early that Thursday morning Debbie said she couldn't breathe. We called 911 and Debbie's cancer's doctors. As I held her hand and held her close her heart stopped. She took her last breath. That was at 5:30 in the morning on Thursday, October the 22nd. Debbie was gone.

There can be no apologies. There can be no do-overs. Debbie's gone. Please hear the 38,000 echoes of this voice. We are people, not numbers.

THE COURT: Thank you, sir. That --

MR. HENRY: Thank you.

THE COURT: I know it must have been difficult. Thank you.

MS. CYGANOWSKI: Your Honor, the Committee members and their personal plights mirror the 38,000-plus litigants who have sued Johnson & Johnson, JJCI, and the many other affiliated entities in both federal and state court. Their voices have a right to be heard.

No one with a terminal illness wants to sue. None of these claimants want to spend their last breaths in a courtroom litigating against Johnson & Johnson or anyone. If they had the choice of being cured and going home, they would not hesitate. But given their lack of choice they are now desperately seeking their day in court.

We know and are confident that this Court will be dedicated to assuring that their voices and personal pleas will remain important and integral, and not be lost in the cascade of economics which all too often consume our bankruptcy cases. Thank you.

THE COURT: Thank you, Ms. Cyganowski.

MR. STARK: Good morning, Your Honor.

THE COURT: Good morning, counsel.

MR. STARK: My name is Robert Stark. I'm with Brown Rudnick. It's hard to follow that, forgive me.

If I may, I first want to thank the Court and particularly Mr. (indiscernible) for the help this morning and the patience.

We have a presentation to make. I sadly have the job after following that with a little intellectual and conceptual stuff. But I find myself, having sat through what I thought was an 85-percent presentation not to the Court, but to these people, as to why you won't negotiate with you. I think that answer was there. Now I have to put it into the intellectualism. So if Your Honor will allow me, please.

THE COURT: By all means.

MR. STARK: Next slide, please. If it's okay, I brought some water. Is that all right?

THE COURT: Feel free.

MR. STARK: Thanks. LTL Management LLC, what is it? What's its purpose? What are we supposed to be doing here before Your Honor? I ask that before every single case I have. This one's a new one for me, Your Honor, and I've been doing this a long time.

Let's go to the next slide, please. It has only one purpose, and that's to shelter J&J, and by J&J I mean the non-debtor attributes of the J&J conglomerate, the empire.

Includes J&J, includes JJCI, the farthest reaches of the global, unbelievable wealth. That's what I mean by J&J.

This debtor has got one purpose in life, and that's to shelter J&J from its top liabilities. It was created literally hours before it filed for bankruptcy. It had one stated purpose, which was to file for bankruptcy. It's its only purpose for being. It has no business. Nothing to rehabilitate. Nothing to reorganize. Nothing to sell.

The business, because there isn't one, doesn't buy anything. Doesn't sell anything. It doesn't produce anything. Doesn't deliver anything. It does not participate in the commercial world. It is a passive shell. It is a special purpose vehicle, but colloquially SPV.

I enjoyed the effort to try to commercialize this into something that it's not. It is nothing. It is an insignificant legal entity as a conduit through which the rest of J&J seeks to tap the benefits of bankruptcy without being in bankruptcy. It has no creditors, except for one class: these people. There are now banks, bondholders, trade creditors, customers, suppliers, vendors, landlords, utilities, unions, or taxing authorities. There ain't anybody else but these people.

There is no common pool problem to work through. There are no employees. They're all J&J employees secunded and drawing a J&J salary. There is no independent board. They're all J&J employees drawing a J&J salary. J&J's longstanding

corporate law firm Jones Day created this special purpose vehicle hours before the filing to file, not to protect the nonexistent assets and nonexistent business, but to enable J&J to borrow the automatic stay without it having to file for bankruptcy itself.

It is a conduit passthrough, and they don't even hide it. They hide it in plain sight, if you want to call it that. LTL stands for Legacy Talc Liabilities. It has no other purpose.

Importantly, Your Honor -- next slide, please -- this is an inside-out bankruptcy case, another attribute -- I've never seen this before. There's nothing in the estate.

Bankruptcy, bankruptcy code, bankruptcy jurisprudence, bankruptcy academia, all sorts of principles going back to the beginning of modern bankruptcy, through the Supreme Court cases in the '20s and the '30s all the way to today, talk about the estate, what is in the estate; how do we create its profit-making potential; what pre-petition transfers ought to be brought back into that business; how do we value that estate; how do we whack it up; who gets what amongst all those varying constituents who don't appear here.

There's nothing in our estate. They put a little bit of cash. They put an AR stream in it which they value, but we probably don't value it, at a rather small number relative to the claims.

And then there's the contract, this limited capped contingent opportunity to do a deal with J&J where maybe if they feel like it they'll put money in if the price is right. This is an inside-out bankruptcy because the value proposition is not what's in the estate. It's what J&J might contribute if all of these people start getting, in their eyes, reasonable on the global settlement term. There is no case like that in our histories.

But now let's look at the legal machinations. Ms. Earl.

J&J's New Jersey. I grew up in East Brunswick down the block from it. It was founded in New Jersey. It's been headquartered in New Jersey. Everybody on my block worked for J&J. It's operating under New Jersey law since 1800s. It is an integral multifaceted part of the New Jersey economy. Indisputable.

But New Jersey corporate law doesn't allow them to do what they wanted to do here. So what did they do? They found a way into Texas and said even though we're a stranger to Texas, we'll go orchestrate this entire restructuring under Texas law and call it as if it was in New Jersey.

And that's not enough. Because they most assuredly did not want to be before Your Honor, they then manufactured jurisdiction in North Carolina, not because LTL or J&J has any particular business connectivity to North Carolina, or Texas,

for that matter, but to evade the Third Circuit standard on bad faith filing. And what did they do immediately upon filing? They went to get a 105(a) injunction to protect not LTL, but J&J, JJCI, everybody else.

The conduit was working. The machinations were working. And none of this comports with bankruptcy law.

Ms. Earl. Chapter 11 offers this estate and its creditors nothing. There's no business here to protect, preserve, enhance. The estate is not a melting ice cube. There's nothing in it. There's no inter-creditor dispute over who gets what. There's no business rehabilitation that can be done here, because there ain't no business. There is no valid reorganizational purpose here at all.

This case is all about litigation advantage, not for this debtor, but for J&J. It's borrowing LTL's automatic stay without filing for bankruptcy itself to seek -- to seize all of these claims and stop them in their tracks from being prosecuted against J&J, while people are dying of cancer and while they're trying to prepare their families' financially postmortem. It does not get more inhumane than that.

And by the way, because I sat through so much about all the corporate lawsuits, just another case, there's no inherent viability to the Texas two-step or any other structuring here. This is about as avoidable as can be. I don't remember what the slide said, but my jaw -- I had to pick

it up with a shovel when I saw it, about they're not moving anybody away from the assets. Sixty billion he said was just in JJCI alone. And that's the entire purpose of the transaction, to get these people away from the 60 billion, plus everybody -- every other asset class in the JJ -- J&J conglomerate.

That's avoidable. It's also wrong under such big chestnuts in our jurisprudence as Pepper v. Litton. You can't just write off by hiring a high-falutin lawyer overnight decades of tort liability. Imagine the public outcry to that. Imagine the public policy, consumer protections, even capital markets, implications of that. Go ahead, poison the city. We could just have -- hire these guys to just overnight dump it into an SPV, put it before Judge Kaplan, and all go away.

But let's step back. Ms. Earl.

Why, then, go through all the trouble? Why do all this? I saw all those slides. My goodness. We have no case, apparently. What was that one about our expert thought that the cosmos was talcum, whatever. Well, if that's the case, then why fear the tort system? What's so wrong about it if we're just so silly?

In fact -- Ms. Earl -- J&J for a very long time, and these folks are providing more than I'll ever learn about it, but for a very long time they were winning. They won. They loved the tort system. They loudly proclaimed it in the Imerys

case down in Delaware, how they really wanted to go back to juries. But then things changed.

Ms. Earl. 2018, Canada's version of the FDA does find a causal relationship between talc use and ovarian cancer, and then it reaffirms it last year -- or this year. In 2019 the FDA finds that J&J's talc products do contain asbestos. What -- they said they did.

What did J&J do right after that? They removed all baby products, all talc-related baby products off the shelf. You can't buy what was put in my diaper and what Your Honor may have put in your child's diaper, because the FDA said you shouldn't do it anymore. But then the Daubert rulings started going the other way.

2020 the Appellate Division of the Superior Court of New Jersey issued a unanimous 36-page opinion holding that the plaintiffs' experts adhered to methodologies generally followed by experts in the field relied upon by studies and information generally considered an acceptable basis for inclusion in the formulation of expert opinions, reversed the lower court's order excluding the plaintiffs' experts on causation. That's not a trial court. That's not a jury who was amuck. That was the Appellate Court.

Chief Judge Wolfson, April 27th, 2020, issues a 141-page decision. You know, she's been doing this for five years.

THE COURT: I slogged through that opinion, yeah.

MR. STARK: Did you see this point, this quote:

"What remains clear from the general causation evidence relied by the experts on both sides in this matter is that there is scientific evidence supporting each side's opinion."

I think Judge Wolfson deserves better than to think she's just some jury that's gone amuck.

In June 2020 the Missouri Court of Appeals considered the sufficiency of expert opinion testimony linking talc-based products and ovarian cancer. I don't know, is this the -- was this the case where the expert, you know, thought that the Cosmos was made of talcum powder?

Contrary to the overwhelming scientific consensus, that's what they said, Missouri Court of Appeal unanimously rejected J&J's decision. Not the trial court. Not a jury gone amuck.

So J&J doesn't like the court system anymore, so it turns to liability management. Ms. Earl, please.

And it's important, and Your Honor's going to see all of this soon enough, that J&J didn't disclose a bunch of stuff along the way. It turns out that they had some files that more recently they've had to disclose and, boy, that infuriated some juries. Suggested they may have known all along, were told to warn, and decided not to.

So juries have been responding, and they have been

responding with big punitive damages that are being sustained on appeals. And not just against JJCI, but J&J, because they're deeply involved in the daily attributes of talc mining, the business of creating it, the business of marketing it, making sure that everybody felt -- when they saw that pink lettering in the script that we all grew up with that you felt warm and cozy and had no idea that it might in fact kill you.

J&J now flees the courts, doesn't like the courts anymore, and the heart of its liability management is Your Honor. Congratulations. You now have them. Their desire is for Your Honor to deliver to J&J the benefits of bankruptcy without compelling it to undertake any of the burdens of bankruptcy.

They want to file for bankruptcy? Sure we'll engage, because we have to. But they file a little SPV as a conduit to get everything else. It don't work like that.

And the strategy is clear, and it's really inhumane. If they can borrow the automatic stay long enough and delay the cancer patients, people who are now trying to financially plan for their familiar postmortem, they can push them into a cheap settlement. This is not your typical commercial transaction. This is not your typical commercial bankruptcy.

Ms. Earl, please. How many slides did we have on J&J deserving of judicial sympathy? Ten, 15? Let's leave aside the obvious, which is they made the stuff, they sold the stuff,

they buried the files and didn't want to warn people to an issue of their own making. Let's leave that aside for a minute, okay?

J&J is one of the world's wealthiest, most powerful and politically-connected conglomerates. It can afford probably more than anybody else to manage its tort issues without the help of this Court. You don't need to save Johnson & Johnson. That is not something you need to wake up at night and worry about.

It complains about 3.5 billion in tort costs over five years. If Your Honor took a look at the last 10-Q statement filed by J&J, you'd see there's 41 billion of cash on hand or cash equivalents on hand. It has a captured insurance company. It enjoys a higher credit rating than the United States government. It has a stock market capitalization of nearly half a trillion dollars. It distributed to its stockholders as dividends and buybacks $150 billion in the last 10 years. And it's complaining about 3-1/2 billion that it has to pay for what it did? No. This company does not need your help, Your Honor.

Last -- next slide, please. I've done a lot of bankruptcy cases, Your Honor. It's rich people fighting over rich people. This is a case of moral imperative. This is not a legal issue for us. This is a moral issue for us. The TCC must vigorously oppose what's going on here. It is wrong. It

is wrong for this country. It is wrong for these people.

And we're not alone in that regard. Ms. Earl. On November 10th a number of senators signed a letter and sent it to the CEO of Johnson & Johnson, and I quote:

"We write to strongly object to Johnson & Johnson's efforts to manipulate bankruptcy laws to evade accountability for any harm caused by your products. We urge you to immediately reverse course so that tens of thousands of consumers can have their fair day in court."

Exploitation of the bankruptcy system by large companies to avoid accountability is unsurprising, but it is also unacceptable.

Next slide, please. Preliminary injunction tramples dying people's Seventh Amendment rights. It's not right under the law. It's not right as a matter of basic human decency and equality and equity. It's going to dissolve. It should dissolve.

This bankruptcy case should be dismissed as a bad faith filing just because it's horrible what's happening here, but because everyone's watching it, and if they get rid -- away with this, can you imagine what the environmental issues, the products, the capital markets, implications of that ruling would be?

Let's go further. The derivative standing, you can't trust J&J board and J&J employees secunded to LTL, being

advised by J&J's longstanding corporate counsel, to control all of the claims that the estate has against J&J. Fraud -- it's dripping fraudulent transfer and complicity with fraudulent transfer, and contribution indemnity. Any liability we have is their liability. Business tort, veil piercing, substantive consolidation. It goes on and on and on. Only then do we pick up the question that Mr. Gordon would have us all listen to in 45 percent of his presentation.

Should we, the one class of creditors in this case, last time I checked how 1129 works that class needs to accept the plan and to do the thing that they want at 75 percent. Should we endorse this charade? No, Your Honor. That's not what we're prepared to do.

Does Your Honor have any questions for me?

THE COURT: No, I don't. Thank you very much.

MR. STARK: Thank you.

THE COURT: Thank you for the information and thank you for the participation of the Committee who were involved. I appreciate the information. Needless to say, I take these presentations as argument. They're not evidence for today's matter, certainly, and not evidence going forward as we progress over the next -- course of the next couple months. But I thank you for your efforts, and I think it was quite informative all the way around.

All right. Let's turn, Mr. Gordon, to today's

matter, and I think your suggestion as to following the agenda that was filed makes the most sense. I will work with my court recorder to coordinate what matters are on our -- my calendar, but we'll work by the agenda numbers.

MR. GORDON: Your Honor, Greg Gordon, Jones Day. I think the first uncontested matter -- well, we had a couple of matters that were adjourned. I just wanted to, as you can see from the agenda --

THE COURT: Let me just so that we always have a record --

MR. GORDON: Sure.

THE COURT: -- acknowledge for the record that numbers 2 and 9 on my calendar, number 2 being the motion relative to the QSF, as well as the motion seeking to seal certain information, that's number 9, are being carried to February 18th of, I think at --

MR. GORDON: Correct.

THE COURT: -- this point 10 a.m. And now --

MR. GORDON: Correct.

THE COURT: -- will go to the uncontested matters going forward?

MR. GORDON: Right, and I think the first one up is the application of the Committee to retain Brown Rudnick.

THE COURT: Right. That is, Bruce, numbers 10 and 24 on the calendar today. Counsel.

MR. GORDON: I had no prepared remarks, just to answer any questions Your Honor may have.

THE COURT: No, I had the benefit of reviewing everything you've submitted.

MR. GORDON: As long as is.

THE COURT: And my understanding is that for these uncontested matters there are -- I believe we received this morning a set of orders, Mr. Stolz?

MR. STOLZ: Yes, Your Honor. Daniel Stolz, Genova Burns, on behalf of the Committee. Yes, we have dealt with the U.S. Trustee's Office. We have addressed their concerns, and we have filed supplemental certifications for each of the firms and submitted revised orders incorporating the requests of the U.S. Trustee.

THE COURT: All right. Let me ask, Mr. Sponder, you're on CourtSolutions, if you can confirm the U.S. Trustee's agreement in having this go as uncontested.

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee. Your Honor, the United States Trustee sent inquiries to each of the Committee processionals, and each professional has filed a supplemental declaration or certification on the docket which resolved the United States Trustee's concerns. Thank you, Your Honor.

THE COURT: All right. I -- thank you, Mr. Sponder. I'm going to proceed through these uncontested, and we'll mark

them -- Mr. Sponder, if there's any issue you wish to raise, please interject, but for expediency -- so numbers 10 and 24 on the calendar as far as the Brown Rudnick retention it is being granted, marked OTBS.

The next matter is the retention of Parkins Lee & Rubio. That's numbers 11 and 25 on my calendar today. And my understanding is that is also granted and OTBS.

Someone will correct me when I'm wrong. Happens often enough.

Next on the agenda, number 5, is the application of Bailey & Glasser, which is numbers 9 and 23 on my calendar, and that is going to be granted, with order to be submitted.

Next on the uncontested matters, number 6, the retention of -- for -- and these are all for the TCC -- Massey & Gail as special counsel, calendar numbers 12 and 26, and this will be marked granted, OTBS.

Next, number 7, is the application -- next -- number 7 on the agenda, is it actually not listed, Bruce, on today's calendar. It was Docket No. 565, which was vacated. It is the application for retention of Genova Burns as local counsel. It is granted.

Is that -- Mr. Stolz, that's one of the orders that's included?

MR. STOLZ: Yes.

THE COURT: Okay, thank you. Number 8 on the

calen -- sorry, 8 on the agenda, number 27 on the calendar, the retention of Otterbourg firm, and that is marked granted, OTBS.

Number 9, this is not a retention matter. This was The Miller Firm's application to add Michael Miller to the talc -- to the TCC. This was carried from an order shortening time.

Ms. Cyganowski?

MS. CYGANOWSKI: Yes, Your Honor. It's our understanding that this is being withdrawn by the firm. There was the untimely death of Mr. Miller around Thanksgiving. So probably at this point I would simply ask adjournment on it so that the firm can make whatever arrangements they want to make.

THE COURT: All right, then.

MR. SPONDER: Yes, Your --

THE COURT: I'm sorry?

MR. SPONDER: -- Honor?

THE COURT: Yes, Mr. Sponder?

MR. SPONDER: Yes. Thank you. This is Jeff Sponder from the United States Trustee's Office. A withdrawal was already filed on the docket yesterday afternoon. I don't have the appropriate docket number, but we did correspond with The Miller Firm and they advised that they are withdrawing the application.

THE COURT: All right, then. Number 14 on today's calendar, Bruce, we're going to mark this matter as withdrawn. Thank you, Mr. Sponder.

MR. SPONDER: Thank you, Your Honor.

THE COURT: You're welcome. Number 10 on the agenda -- and now we move I believe to the debtor's professionals, this is also not on our calendar today -- Mr. Defilippo, is your firm's retention?

MR. DEFILIPPO: Yes, Your Honor. No objections have been received. We believe the U.S. Trustee is satisfied with our supplemental declaration, and we also believe we have an agreement on form of order.

THE COURT: Mr. Sponder, are you -- is there a consensus?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee. Similarly with the Committee professionals, we had some inquiry to Wollmuth, and they provided supplemental declarations, which resolved that issue, so the United States Trustee does not have any objection to Wollmuth's retention in this case. Thank you, Your Honor.

THE COURT: All right. Thank you. And the Court has -- I have reviewed the supplemental certifications that have been submitted for all of the professionals in the past three days or so. We'll mark, then -- again, not on the calendar, but this is Docket No. 725. We're going to mark this granted, OTBS.

And, Mr. Defilippo, these orders on the debtor's

side, who will be submitting them?

MR. DEFILIPPO: We'll be submitting them electronically.

THE COURT: All right.

MR. DEFILIPPO: Thank you.

THE COURT: Address them to Ms. Earl, please, in chambers.

MR. DEFILIPPO: Yes, sir.

THE COURT: That way we avoid confusion. We come now to number 11 on the agenda, which is the contested matters going forward, number 1 on the calendar, which is the ordinary course motion for professionals. Counsel?

MS. RUSH: Good morning, Your Honor. Amanda Rush with Jones Day for the debtor. I'm happy to report as an initial matter that we did have one objection to the ordinary course professionals motion by the Talc Committee. We believe we reached an agreement with them on the terms that will be set forth in an amended order.

We also received some informal comments from the United States Trustee, and we believe we've reached agreement with the United States Trustee on those comments.

So we will be submitting -- we do have a blackline of the order if Your Honor would like to --

THE COURT: That's what I was going --

MS. RUSH: -- take a look at it.

THE COURT: -- to ask.

MS. RUSH: So --

THE COURT: I'll review it when -- and you're going to be emailing to Ms. Earl the final version?

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: All right, thank you.

MS. RUSH: All right. First I'll just go through a little background on the motion, and then we'll get to the changes in the order.

THE COURT: Sure.

MS. RUSH: And I'll go through those quickly, and then the Committee and the United States Trustee can weigh in if they'd like to.

As Your Honor is probably aware, this is the debtor's motion for an order authorizing the retention and compensation of professionals used in the ordinary course. We're proceeding pursuant to Sections 327, 105 and 330 of the Bankruptcy Code.

Here the ordinary course professionals are the pre-petition talc defense counsel. There's approximately 45 of them. And toward the beginning of this case there current -- the case is currently stayed, so the activity isn't incredible in most matters, but, of course, in the beginning of the case they were actively involved in filing stay notices.

There's also one of the ordinary course professionals which I'll get to when we walk through the redline, Orrick, who

is handling certain appeals as to which the stay has been lifted because they're covered by surety --

THE COURT: Bonded for.

MS. RUSH: -- bonds, so they're fairly active and they're moving forward as we speak. And the debtor also anticipates that these professionals would provide other services related to the talc litigation, monitoring dockets, providing information to the debtor as needed, but, importantly, the debtor would not be using these professionals for matters of case administration relevant to the administration of the bankruptcy case. They would be involved in the talc litigation.

And the debtor believes that it's important for the debtor to continue to have access to these professionals. It would be inefficient and it would be very expensive to try to replace them or even seek to retain them in the bankruptcy case, particularly given that for many of the firms we believe that their roles will be de minimis or ad hoc over time.

We -- I wanted to point out as we get to the procedures, and this is one of the items that we talked with the Talc Committee about, Your Honor may have seen this morning we filed an application to retain Skadden, Arps as special counsel, so they will no longer be on the ordinary course professionals list pending their review and argument of their retention application.

Now I think it probably makes sense to sort of walk through the order, because we're getting to sort of the procedures --

THE COURT: Yes, please.

MS. RUSH: -- portion, which is where most of the revisions occur. So initially here we'll be -- you know, the ordinary course professionals will be retained upon the submission of both the declaration and a questionnaire. That's what the redline shows. Then, you know, after an objection period, 14 days, the professionals will be considered retained and the debtor will have the ability to pay them.

Then moving down to paragraph 3F, this provides that in connection -- that the professionals also will provide copies of reasonably detailed invoices to the United States Trustee, the Talc Committee, and if appointed, a future claimants representative, and they'll do that on a monthly basis.

Let's see. The next thing I'd like to go through is sort of what occurs if an ordinary course professional exceeds the caps, and jumping down a little bit in the order to -- it's paragraph 4 -- we did agree to significantly reduce caps at the request of the United States Trustee. The general caps were monthly -- on a monthly basis are -- is 25,000, and with an aggregate cap of 187,500.

The one exception to this is Orrick, who, as I

described earlier, is handling the appeals that are not subject to the stay. They have higher caps at 60,000 a month and $450,000 on an aggregate basis.

And going back to paragraph 3F, this sort of goes through what will occur in the event that an ordinary course professional exceeds a cap. If they exceed a cap on a monthly basis, they'll be required to file a fee application subject to review of, you know, the parties and the United States Trustee. If they exceed the aggregate cap, then the debtor would have to seek to retain that professional.

The next thing I think to go through is that we agreed between United States Trustee and the Talc Committee to add various reservations of rights language. Essentially, and I can speak more to it if they'd like to, but essentially reserving rights to object to ordinary course professional retentions. If, for example, it comes to light or it's discovered that ordinary course professionals have a conflict or they're engaging in -- their scope of activities has exceeded what the professionals set forth in their declaration, Talc Committee's right would be reserved to object to that.

And from my perspective those were sort of the key high-level items that I wanted to go through. At this point I'd ask if Your Honor has any questions.

THE COURT: Thank you. I'm going to just review it before -- and then we'll wait for the electronic version to

come.

Mr. Sponder, on behalf of the U.S. Trustee is your office onboard with the changes?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of United States Trustee. I'm not sure if there were any more changes made after our agreement with the debtor, that there's, in other words, any additions from the Committee that I need to review.

And with that said, Your Honor, the debtor has agreed to all the requested revisions of the United States Trustee, including, most importantly, a provision that the order is only procedural in nature and that the U.S. Trustee reserves his rights to object to retention of any ordinary course professional on any grounds, including those ordinary course professionals identified on the OCP list which was attached as Exhibit A to the motion. Thank you, Your Honor.

THE COURT: All right, thank you, Mr. Sponder. And, obviously, you'll take a look at what's being submitted, and if there are any changes you'll reach out to chambers. That applies to anybody.

On behalf of the Committee, any issues with the presentation?

MR. STARK: Your Honor, Robert Stark from Brown Rudnick. We signed off on this order.

THE COURT: Thank you. All right. That's great. I

appreciate the consensus. I always will and always do. And we'll -- and I'll take a look at it.

MS. RUSH: Thank you, Your Honor.

THE COURT: Thank you. So we're going to mark number 1 granted, OTBS. Number 1 on the calendar.

That brings us to number 12 on the contested matters, probably the most interesting one, Jones Day application for retention.

MR. GORDON: Greg Gordon, Jones Day, Your Honor. I don't know if I'd characterize this as the most interesting. Your Honor, that --

THE COURT: Subject of interest?

MR. GORDON: Your Honor, that -- the objection -- I'm sorry -- the application obviously drew objections from the Talc Committee, the U.S. Trustee, and from the Alystock, Witkin law firm, and we have had discussions with the parties in an effort to try to work this out and I think we've made -- you know, we've made progress, but we're not there. We do have an agreement for an interim approval of the retention pending a further hearing on January the 11th with the Committee.

We've been advised by both the U.S. Trustee and the Alystock law firm that they oppose that. We would ask that the Court, nonetheless, approve a form of order, and I have a copy here this morning, Your Honor, this form of interim order, if I may --

THE COURT: Yes, please.

MR. GORDON: -- approach.

THE COURT: Thank you.

MR. GORDON: So, Your Honor, the thought from the debtor's perspective was that the parties and the Court and the U.S. Trustee, including the U.S. Trustee, would benefit from additional time to consider the issues that have been raised, including an opportunity for our firm to provide some additional information responsive to some of the factual questions that have been raised or some of the factual statements that have been made.

And that was the thought behind pushing this to January, but in the interim we're asking for approval on this sort of interim time period for the firm to continue to work for the debtor, and, frankly, to be paid by year end fees that are due to the firm. And the -- so the principle focus of the order I would say is probably reflected in the first two paragraphs, that it's on an interim basis only and that the Court's not making any findings, particularly with respect to no adverse interest and disinterestness, which are the two areas of focus I think of the objections, and then on top of that there's a number of provisions in the body of the order that had reservations of rights to --

THE COURT: No law of the case, res judicata --

MR. GORDON: Correct.

THE COURT: -- collateral estoppel.

MR. GORDON: Yeah, they make it entirely clear that no one's positions would be prejudiced and that the firm wouldn't use the entry of an interim order against any of the arguments that are being advanced by the parties. Now, I will say just for the Court and the parties to consider that the debtor is willing to have conflicts counsel brought in to the extent that parties think that would be of assistance or perhaps address their issues at least in part, and we'll continue to meet and confer with the parties and see, Your Honor, if we can make further progress in the interim. But that's the game plan.

Again, it's -- my understanding is that's agreeable to the Committee. It's not acceptable to the U.S. Trustee and Aylstock that the firm be retained on an interim basis with full reservations of rights to the parties, and then we would revisit this with a fuller record and more time for briefing and argument at the hearing on January 11th.

THE COURT: And apart from the U.S. Trustee and the Aylstock firm the Committee is onboard with the briefing schedule that -- that's embodied in the order?

MR. STARK: Yeah, if I can have the computer --

MR. GORDON: Sure.

THE COURT: Yes, please.

MR. STARK: -- (indiscernible).

MR. GORDON: We are, Your Honor, to answer the question directly, but I did want to rise and urge the Court, with all due respect to the U.S. Trustee and the Alystock firm, to overrule their objection to the proposed -- without prejudice, okay. The most important thing from our perspective is moving to those upcoming hearing dates. That trial on the motion to dismiss is very important to us, okay?

And I will say this about my colleagues on the side. We've met, we've conferred, and they talked to us, and they're willing to accommodate to do the things that are necessary to keep the calendar forward, as they said in their pleadings, and I honor them for that.

So we sat down and we said, look, these are big issues, right? If you're right and your case theory holds, well, I guess we'll lose and then you'll have your issue. If we're right, that's your risk. That's what we've put in our proposal. And they said, to their credit, we'll take that risk, we'll do that. Okay?

It is without prejudice to anybody. You want to object on disinterested grounds to their fee application? That's still up in the air. That's available.

All that's happened is we've moved forward, and with it we've moved all of the efforts that -- undertaken right now, discovery, et cetera, to get trial ready in February on the motion to dismiss. Critically important to us, dislodging

counsel and starting over again, not eye on the prize from our perspective. Since nobody is going to be hurt by this, we think it's the right way to go.

THE COURT: All right. Thank you for your comments. Let me hear first, counsel for the Alystock firm. I hope I'm pronouncing it correctly.

MR. PFISTER: Good morning, Your Honor.

THE COURT: Good morning.

MR. PFISTER: Rob Pfister from the (indiscernible) firm on behalf of the Alystock firm.

THE COURT: Alystock. All right, thank you.

MR. PFISTER: Your Honor, two points. First, as a practical timing matter the Jones Day firm has been representing this debtor from October 14th, the petition date, through today, December 15th, with no interim order in place. We're talking about going from today, December 15th, to a hearing on January 11th.

I don't understand why we would need an interim order that raises issues when we could just continue the application to January 11th. We have no objection to continuing the hearing on the application to January 11th. We do have an objection to the interim order.

I share the Committee's concerns about moving this case forward. We are aligned with the Committee in virtually every respect. However, I don't believe there's a basis in the

Bankruptcy Code to authorize the retention of a professional and the compensation of a professional without a finding of the critical issue of disinterestedness and no adverse interest.

So that's the issue in terms of an interim order. Again, no question -- no objection from me, and I don't believe there's one from the U.S. Trustee, on merely continuing the application to January 11th. We're willing to dialogue with the debtor. We're willing to dialogue with the Committee and with the UST to find -- you know, to work towards the January 11th date. We're comfortable with the briefing schedule that's set out. But we do object to any interim order.

THE COURT: All right, thank you.

MR. PFISTER: Thank you.

THE COURT: Let me hear from Mr. Sponder, U.S. Trustee.

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of United States Trustee.

Your Honor, the debtor has apparently taken up the offer of this procedural accommodation made by the Talc Committee concerning Jones Day's retention as counsel. As I understand it, the Talc Committee will not press its objection to the general retention of Jones Day subject to the Court not making any findings or conclusions that Jones Day are disinterested professional and they are not burdened by an adverse interest.

The Talc Committee cites the Third Circuit's decision in Marvel that purportedly obligates this Court to disallow Jones Day's, and I quote, "Retention if after adjudication an actual conflict of interest is found that allows the retention if in the Court's discretion there's only today a potential conflict of interest," end quote.

As such, Your Honor, the Talc Committee argues that, and I quote again, "Reserving the issue for a later date adjudication places this contested matter in the potential category," and end quote.

Your Honor, this is a clever argument made by the Talc Committee, and it still stands under Marvel and the Bankruptcy Code. Marvel stands for the proposition that retention should be denied if there exists an actual conflict, and that the -- that a potential conflict is left to the sound discretion of the court.

The Third Circuit in Marvel found that employment of a professional is a potential conflict and disfavored. Under Marvel if the Court were to find an actual conflict Jones Day's retention would be denied. If the Court were to find a potential conflict, the Court would have the discretion whether to approve or deny that retention.

What the Talc Committee suggests, and Jones Day now requests, is the Court to approve Jones Day's retention on the theory that they have a potential conflict and reserve the

issue of a disinterested and actual conflict for a later date. I'd rather -- there's nothing in the Bankruptcy Code that authorizes such a conditional retention.

Section 327(a) requires a professional to be disinterested and not hold an adverse interest in order to be retained. Without such findings, Your Honor, how can Jones Day's retention be approved? In fact, if the Court were to determine today that the conflict is potential, the Court then would be required to make a decision as to whether the retention should be approved or denied, which is not what Jones Day or the Talc Committee is requesting.

Instead, Your Honor, there should either be a hearing today on Jones Day's retention and an adjournment, which the United States Trustee has already consented to. In fact, Your Honor, Jones Day agrees to adjournment to January 11th, 2022 for the Court denies procedural accommodation request.

Your Honor, practically speaking, if the Court allows this, what's to stop this type of conditional retention from being sought in every case the United States Trustee objects to retention. I just think this is taking us down a rabbit hole that you don't want to go down, and the result, Your Honor, the United States Trustee objects to this, quote, unquote, conditional retention. Thank you, Your Honor.

THE COURT: Thank you, Mr. Sponder. Is there any response offered?

MR. GORDON: Greg Gordon again, Your Honor. Mr. Sponder's correct, we have agreed to adjourn it if the Court's not willing to approve the conditional retention. From our perspective there is no record today that suggests there's an actual conflict, and the Court does have discretion. I mean, honestly from our perspective it's a matter of -- it's -- I'll just be blunt about it, it's year end. There's always an effort at year end to try to collect what you can collect, and, you know, if it turns out that our application's approved we'll be the only ones that hadn't -- you know, weren't able to be paid.

And otherwise if our application is denied by the Court in January, we'll have to pay the money back. I mean, we recognize that. I don't think anyone's worried about the ability of the firm to disgorge the payment and pay it back.

So from our perspective you have a legal basis to do it. We would ask that you do it over the objection of the U.S. Trustee, but to be clear, we're prepared to adjourn it if the Court isn't comfortable with the interim relief.

THE COURT: Thank you, Mr. Gordon. Thank you, counsel.

It's interesting. Different districts have different ways of providing -- approving retention. I went through the process that the North Carolina courts used where it's ex parte with very little information other than what appears in the

pleadings. They're granted, and then we have motions for reconsideration that were amended orders.

We had such a motion for reconsideration in Bestwell which was ultimately dropped, with briefing on many of the same issues, not all, but because with every case, there's slight modifications, the bells and whistles on both, the funding agreements, the structuring and the retention and every case is different.

Judge Whitley approved retention in DBMP. Even in an amended order provided, I think, fewer reservations of rights than what I've just gleaned from the proposed order that's being proffered.

I appreciate the U.S. Trustee's concerns about the slippery slope. I will say is, what is to stop that from becoming problematic is the Judge and the Court, to only do so when it's appropriate. At this juncture, I am going to overrule the objections.

I am prepared to make findings that, for the limited purpose, of entering interim retention and not to be binding as law of the case going forward, that I see only the potential for a conflict.

Certainly, I don't have a record that supports an actual conflict at this juncture and I don't think anybody can point to at this juncture on the record on the pleadings that are in front of me; actual conflict or, at least, they'll be

further amplified in arguments, in pleadings and in argument and perhaps testimony as we go forward. I appreciate the concerns but I don't see the prejudice to the Estate.

I obviously see prejudice to Jones Day. I've practiced; we all practiced. I know of year end burdens, but that is not of consequence either.

What's appropriate here is that professionals go forward with a comfort level that the Court's seeing what's going on and can monitor and oversee and make decisions at the appropriate time. And the appropriate time will be probably in January, after briefing. But at this juncture, what has been identified as conflicts may indeed bloom into actual conflicts or determination that the potential conflicts are not so remote or are so severe as to warrant disqualification.

I have confidence that Jones Day is not going anywhere as a firm, nor their finances and that this Court is certainly probable if there were a change and the Court were to terminate the retention. Enough said. We'll -- I'll approve the retention over the limited objections. We'll look forward to the briefing.

Any other -- Counsel, any other reservation of rights or any other comments?

MR. STARK: No, no, no, no. I just -- just for clarification, if I may?

THE COURT: I'm sorry, go ahead.

MR. STARK: I just would like a clarification.

THE COURT: Yes.

MR. STARK: If I may. It's very important, and I was listening to Your Honor extremely carefully -- Robert Stark from Brown Rudnick again. It's very important that the record is very clear.

The negotiated proposed form of order that's, that we've agreed upon, which I hope that Your Honor will sign, is extremely clear that there's no findings at all, at all, respecting today, yesterday, tomorrow, disinterest in this.

They may be burdened with a conflict that's disinterested today, but we're not having a trial today. Your Honor controls when trials happen and it's not going to happen today. So to the extent that Your Honor's commentary about whether today or potential --

THE COURT: Making a finding, correct.

MR. STARK: -- I want to be sure that that -- the record does not overwhelm what's in the order which is -- was carefully calibrated under the circumstances of the case.

THE COURT: Let me clarify. Thank you.

I'm noting the potential for conflicts. There is no findings. As I said, the record doesn't support that one way or the other. I expect that to change by January. So, at this juncture, I've noted the potential conflicts. I don't see a barring in the code for making an interim, while there may not

be express authority, there's no -- nor is there an express prohibition.

So I will approve the consensual arrangement going forward through January.

MR. STARK: Thank you.

THE COURT: All right?

MR. SPONDER: Your Honor?

THE COURT: Yes, Mr. Sponder?

MR. SPONDER: Thank you, Your Honor. I know that debtor's counsel provided me with the proposed order prior to the hearing. I did not review the proposed order. I'm hoping that Your Honor would comment on the United States Trustee side. I'd like a -- some time today to go over that order, make any requested revisions and-or perhaps the order was revised since the last time I received it.

But I'd just like some time to take a look at that. Thank you, Your Honor.

THE COURT: That's fine. With all orders, I have strong doubts I'm entering them today. They should be entered tomorrow giving -- I'm waiting for many of electronic submissions and we'll go through them. I'll have a chance to review what's been handed up.

If there are any issues or concerns and you want to ensure that the orders are not entered, call Chambers. I'll arrange for a conference call so we can address it in short

order. All right?

That takes us through -- so, Bruce, that numbers 3 and 16 are going to be carried to January 11th and we're marking interim order to be entered and to be submitted.

All right. Thank you. That takes us -- well, the next matter on was the King and Spalding retention, numbers 4 and 18. Counsel?

MR. PRIETO: Good afternoon, Your Honor. Dan Prieto on behalf of the debtor. Yeah, the next item on the agenda is King and Spalding's application -- and, Your Honor, it sounds like you've reviewed the application so I can forego discussion of them, unless you would find that helpful?

THE COURT: No, I have reviewed it. I appreciate the offer though.

MR. PRIETO: Okay.

THE COURT: Thank you.

MR. PRIETO: Yeah, and on this one, Your Honor, I believe the objection by the Committee has been resolved. We did discuss informal comments, first with the U.S. Trustee, that resulted in a supplemental certification Your Honor may have seen, as well as some revisions to the proposed order.

And then, in order to resolve the limited objection of the Committee, we did add some reservation of rights language in the order. It's in paragraph 10.

And, Your Honor, I do have a black lined, if it's

okay for me to present?

THE COURT: Yes, please. Thank you.

MR. PRIETO: Your Honor, as you'll see in the order, most of the changes relate to addressing just Trustee's comments regarding compliance with the U.S. Trustee fee guidelines and other related fee issues and also preserving rights of the parties to challenge the allocation of fees, that we provided for in the application.

And as I indicated previously, in paragraph 10, you have the reservation of rights language that we discussed and negotiated with the Official Committee.

THE COURT: All right. Thank you. I would assume it's safe for the Court to make the assumption that many of these same changes are going to appear in subsequent Special Counsel retentions?

MR. PRIETO: You're going to see remarkably similar comments, Your Honor.

THE COURT: All right.

Then, Mr. Sponder, you've had the opportunity to review the proposed language?

MR. SPONDER: I have not had an opportunity to review the proposed paragraph 10, Your Honor. I'd like it be sent to me and I'll take a look at it and I'll get back to counsel later on today. But everything else in the order was based on negotiations with debtor's counsel and pursuant to a

supplemental declaration and it's in King and Spalding and all the other debtor professional applications. Those supplemental certifications have been filed and United States Trustee does not object to those retentions.

Thank you, Your Honor.

THE COURT: All right. Thank you. It sounds like both you and I have afternoon homework. Then, we're going to mark number 13 on the agenda which is 4 and 18 on the calendar as granted or to be submitted and we'll await the electronic version.

MR. STARK: Thank you, Your Honor.

THE COURT: Thank you.

MR. PRIETO: Your Honor, the next item on the agenda is item number 14 which is the debtor's application to retain Bates White as its talc expert consultant.

Your Honor, on this one, we did also discuss the terms of the proposed order with the U.S. Trustee and did make some changes to that order to address the issues similar to what you saw in the other order.

On this one though the objection of the Committee remains outstanding. We had been meeting and conferring with the Committee to discuss this one and hope to continue to do that but similar to what we agreed to on Jones Day, we've agreed, the debtor has agreed with the Committee, to do an interim retention of Bates White subject to the objection and

the application being heard at the January 11th hearing.

All rights are preserved in the same manner that it is in the Jones Day order and I do have an order to present to Your Honor.

THE COURT: All right. You can come up.

Mr. Stark, counsel has had an opportunity to review the order?

MR. STARK: May I confer with my counsel?

THE COURT: Sure.

MR. STARK: Okay.

Yes, the Talc Committee's on board.

THE COURT: All right.

UNKNOWN SPEAKER: Well, we just need to review the final version of the order, Your Honor.

MR. STARK: Forgive me, Your Honor.

THE COURT: Okay. Fair enough.

And, Mr. Sponder, I guess you'll have the opportunity again just to make sure that the U.S. Trustee's concerns are reflected in the interim order. I understand -- I would anticipate, Mr. Sponder -- well, I shouldn't anticipate anything.

Does the U.S. Trustee have an objection to the interim arrangement?

MR. SPONDER: Thank you, Your Honor. The United States Trustee raises the same objection that was denied

shortly ago with respect to Jones Day. So we do raise that objection again.

With that said, Your Honor, the order that you're holding for Bates White is much different than the King and Spalding order. It had many other things that needed to be included in there, that I recall. So I just wanted to let Your Honor be aware of that. But the order, as it stands, except for if there's a paragraph 10 in there, like in King and Spalding, acceptable to the United States Trustee.

MR. PRIETO: Your Honor, the U.S. Trustee is correct. There are additional provisions that we incorporated in this order relating to provisions of the engagement letter that the U.S. Trustee wanted modified and related issues like that.

So Mr. Sponder is correct and those were -- we made an attempt to include all the changes the U.S. Trustee had negotiated with respect to the prior order, we tried to incorporate them in this order.

THE COURT: All right. So, Mr. Sponder, you take a look. The Court will take a look. We're going to mark number 14 on the agenda. And, Bruce, it's numbers -- I think the number 15 and number -- no, number 5 and number 17 on the calendar.

We're going to mark those carried to the January 11th date at 10 a.m. and we're going to enter an interim order that is to be submitted.

That takes us to Shook, Hardy and Bacon, number 15 on the agenda?

MR. PRIETO: Thank you, Your Honor. Similar to King and Spalding, changes were made. After discussions with the U.S. Trustee's Office, supplemental certification was submitted to address those questions and comments and the limited objection of the Committee was resolved, again, by including in the order some reservation of rights language, similar to what you've seen in the other orders and I do have a black lined to present.

THE COURT: All right. So this is not an interim order. This is a negotiated resolution?

MR. PRIETO: Correct, Your Honor. The objection has been resolved.

THE COURT: All right. Thank you.

Mr. Sponder, do you need to weigh in?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee. Shook Hardy, like King and Spalding, filed a supplemental declaration to address the United States Trustee's concerns. The order, I believe, includes all of the requested revisions that the U.S. Trustee made, with just paragraph 10, if it's the same as King and Spalding would just like the opportunity review that.

Thank you, Your Honor.

THE COURT: All right. Thank you.

And just for the record, with respect to the Bates and Whites retention application, the Court is, because I value consistency, is overruling the U.S. Trustee's objection and this number 15, Bruce, it's number 6 and number -- well, it's number 6 on the calendar. And we're going to mark it granted OTBS.

MR. PRIETO: Thank you, Your Honor. I think that takes us to item number 16 on the agenda, which is the application to retain AlixPartners as the financial advisor to the debtor.

THE COURT: Right.

MR. PRIETO: There was a limited objection by the Committee. I believe that -- well, that has been resolved by, again, including language in the order reserving the Committee's rights.

In addition, Your Honor, there was discussions with the U.S. Trustee's Office who had a number of proposed revisions to the order that were accepted. Several of them went to the terms of the engagement letter including agreement by AlixPartners to forego during the pendency of the case, the enforceability of the limitation of liability provisions, foregoing the enforceability of arbitration provisions, requiring that any termination of the engagement agreement would need Your Honor's approval and similar type of clarifications with respect to the engagement letter.

And I do have a form of order to present Your Honor.

THE COURT: All right. So number 16 on the agenda, Bruce, is number 7 and number 20.

Mr. Sponder, same concerns to see the final order?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee, same concern.

THE COURT: All right. Then, we'll mark number 16 granted OTBS and give everybody a chance to review it.

Number 17, McCarter and English?

MR. PRIETO: I'm going to sound like a broken record, Your Honor. It's similar situation; the application to retain McCarter and English as special insurance counsel. There were changes made to the proposed order to address comments from the U.S. Trustee's Office.

As well, the Committee had a limited objection that was resolved by the inclusion of reservation of rights language in the order and I do have a black lined to present.

THE COURT: All right. You can hand it up. Thank you.

Mr. Sponder, subject to your right to review the order, correct?

MR. SPONDER: Thank you, Your Honor.

THE COURT: Thank you. And of course, I'm assuming the Committee has seen the language and is comfortable with such language.

Bruce, this is number 8 and 22 on the calendar.

THE COURT CLERK: I'm just confirming for the record we have (inaudible), Your Honor.

THE COURT: Thank you.

And we'll mark this granted, OTBS.

MR. PRIETO: Thank you, Your Honor. I think that takes us to agenda item number 18, which is the application for the debtors to retain Weil Gotshal as special counsel.

Your Honor, on this one, there were some discussions with the U.S. Trustee's Office which I believe were fully addressed by inclusion of a change in the proposed order as well as a filing of a supplemental certification. However, on this one, there does remain an outstanding objection with the Committee and like we did with Jones Day and Bates White, we have agreed to the procedure of interim retention preserving all rights of the Committee and setting the application and the objection for hearing on January 11th.

And I do have a proposed order that the Committee has seen.

THE COURT: All right.

Mr. Sponder, I will overrule the U.S. Trustee's objection to the interim nature, noting your objection; give you a chance to review the interim order as well?

MR. SPONDER: Thank you, Your Honor.

THE COURT: You're welcome.

And we're going to mark number 18 as carried to -- I'm sorry, Bruce, it's number 21 on the calendar today; 18 on the agenda and it's carried to January 11th, all at 10 a.m. and we've marked it OT -- interim order submitted. Thank you.

MR. PRIETO: Thank you, Your Honor.

So, Your Honor, I think that takes us to the last item on the agenda, which is agenda item number 19, the debtor's motion for authority to act as a foreign representative on behalf of the debtor's estate in Canada.

I know Your Honor's reviewed the motion so I won't belabor the issue. I did want to note that if the relief is granted today, Your Honor, the debtor does intend to seek relief in Canada on behalf of the debtor's estate, pursuant to the Companies, Creditors Arrangement Act in the Ontario Superior Court of Justice and we intend to do that on December 17th, two days from now, where there's a tentative hearing scheduled in Canada.

And of course, the primary reason for doing that is to ensure that the automatic stay and the PI order are enforced in Canada, because otherwise there would be unequal treatment between American and Canadian claimants.

There was a limited objection filed by the Committee and I believe that objection was joined by one of the law firms and after discussions with the Committee, I think making some statements on the record may resolve the issue.

I think the issue was primarily a concern about how broad the relief might permit the debtors in terms of relief they were seeking in Canada. And so, I think I can say on the record, Your Honor, that the debtors current intend to seek recognition only of the following at the December 17th hearing which is the Chapter 11 as a foreign main proceeding under the applicable provisions of the CCAA.

We would seek recognition of the existing PI order which does apply pursuant to its terms to some of the proceedings pending in Canada. And if granted today, Your Honor, we would also seek recognition of the order permitting the debtor to act as a foreign representative.

I would also say, of course, if the PI order is extended, we would intend to seek recognition of that in the future. And of course, we would provide notice to the Committee and I understand they've retained Canadian counsel. We would provide --

THE COURT: I saw that on the docket.

MR. PRIETO: -- yeah. We would provide notice to that counsel as well of any further request for relief in Canada.

And then, finally, Your Honor, I should note for the record that we did a comment, an informal comment, from the U.S. Trustee's Office indicating that they wanted the order to make clear that professionals retained by the foreign

representative would be retained in the Chapter 11 case, as opposed to in Canada.

We've agreed to add the language that the U.S. Trustee proposed and as a result, we will be filing an application to retain our Canadian counsel who's involved in that matter. And I do have a black lined showing the additional language from the U.S. Trustee.

THE COURT: All right.

Let me hear from any objectors?

MS. CYGANOWSKI: Yes, Your Honor. Melanie Cyganowski, co-counsel for the Talc Committee. As the Court is aware, the Talc Committee filed a limited objection and reservation of rights in connection with this Motion.

The debtor has no operations or employees in Canada. Indeed, there's no judicial or other proceedings in Canada, hence our objection.

Having said that, we did confer with debtor's counsel, as explained, and based on representations that were made on the record today, and the reservations in our papers here and in Canada, we do not object to the grant of this motion as reflected in that order.

THE COURT: Thank you, Ms. Cyganowski.

Any other counsel, either on the phone or in Court?

MR. PFISTER: Once again, Your Honor, Rob Pfister for the Aylstock firm. We join the Committee's limited objection

and to the extent this resolution is acceptable to the Committee, it's acceptable to us as well.

THE COURT: Thank you, Counsel.

MR. SPONDER: And, Your Honor, Jeff Sponder from the Office of U.S. Trustee and that is correct that that language was proposed and included in the order. I just would ask that any requests for relief in Canada, I know debtor's counsel advised that they would send notice to the Committee. They should also send notice to the United States Trustee, please.

MR. PRIETO: Your Honor, that's fine.

THE COURT: All right. Thank you.

Thank you, Mr. Sponder.

MR. SPONDER: Thank you, Your Honor.

THE COURT: We'll mark this matter, which is number 15 on my calendar this morning as granted, order to be submitted. I accept the representations made as of record and also appreciate the Committee Counsel's review of the appropriateness and the limited nature of the retention as reflected in the representations.

So we'll mark it OTBS. And of course, everybody has a chance -- the final -- for final review of the language of the order.

That takes us to the end of the agenda.

Ms. Cyganowski?

MS. CYGANOWSKI: Almost, almost but not quite, Your

Honor.

THE COURT: I know, we're getting close.

MS. CYGANOWSKI: With the Court's indulgence, something came up during today's hearing and we'd like to discuss with out committee members. If we may, just have a 15-minute recess and then, report back because it might require asking the Court of something.

THE COURT: That's fine but before we do that, should we address the correspondence regarding the meeting minutes, that the issue on?

MS. CYGANOWSKI: Exactly. I forgot about the discovery. Thank you.

MR. GORDON: Your Honor, Greg Gordon on behalf of the debtor. Yes, I think if it works for Your Honor, we're prepared to talk about that. And I also want to give sort of a general status report on where they are -- where we are with the discovery with the Committee and I'm sure Mr. Glasser would like to address the Court as well.

So we can begin with the correspondence.

THE COURT: Why don't we start there. Thank you.

MR. GORDON: So, Your Honor, we, as reflected in the letter that we filed with the Court, I forget now, a day or two ago, there appears to have been a misunderstanding about the reason for the redactions or the redaction of the minutes.

It wasn't primarily on privilege ground; it was due

to relevance. That was a committee meeting that, not surprisingly to the Court, that Johnson & Johnson level that involved a variety of matters which had absolutely nothing to do with the issues before the Court.

There was a request in the letter from Mr. Glasser that we provide Your Honor with a unredacted version of the minutes for in-camera review. And we're prepared to do that. We would just need guidance from Your Honor as to how to do that procedurally exactly. But we're prepared to do that so Your Honor can take a look at the unredacted minutes.

THE COURT: I think the best approach is not to give you my direct email, but to give you my law clerk's direct email, which I think you probably have?

MR. GORDON: Well, and we do have a hard copy here that we could put in an envelope and pass it -- you know, whatever works best for Your Honor.

THE COURT: I think it's fine, just email the unredacted version to my -- not to my Chambers, to Ms. Earl, because I don't -- want to make sure it doesn't get on the docket.

MR. GORDON: Okay.

THE COURT: And I'll take a look as quickly as possible for it --

MR. GORDON: Okay.

THE COURT: -- and advise you all probably by email,

as to any determination.

MR. GORDON: All right.

THE COURT: All right.

MR. GORDON: And then, otherwise, Your Honor, I just wanted to report generally where we are and I know, again, Mr. Glasser -- oh, here he is, he's right here. He disappeared there for a second.

I know he wants to probably address the Court. But you may recall that -- well, I'm sure you recall, we had the telephone conference with the Court. And again, we appreciate the time Your Honor gave us. And we want away -- the debtor went away with a few deliverables, I think, in the wake of that, one of which was Your Honor asked us to make every effort to try to schedule the three deponents, potential deponents --

THE COURT: Correct.

MR. GORDON: -- that we discussed by year end. And we went to work on that right away and in fact, within a couple of days I think of the hearing, we proposed deposition dates for all three of those individuals and that's Ms. Goodridge, Mr. Wuesthoff and Mr. Acevado for next week and propose that those be handled by video.

And those are set. So Ms. Goodridge is scheduled for Monday, the 20th at 9. Mr. Wuesthoff is scheduled for Wednesday, the 22nd at 9. And then, Mr. Acevado is scheduled for approximately for 1 in the afternoon on the same day, on

the 22nd. So that was done.

The second thing was that Your Honor asked us to provide two lists. I think we offered to do that and Your Honor directed that we in fact do that. One was a list of individuals who approved or authorized aspects of the corporate restructuring. And the other was a list of individuals who signed NDAs or their equivalents or consulting agreements in connection with the restructuring.

Those lists were put together. Those lists were provided to counsel for the Committee, I believe, on December 9th, so within two days. I might have said during the conference call that I thought there might be few, if any, individuals who signed NDAs and that was a misunderstanding on my part.

There are actually -- there's actually a document called a clean sheet that a number of individuals sign which has an NDA-type provision.

THE COURT: Okay.

MR. GORDON: And it wasn't crossing my mind that it was technically an NDA but we went back and looked at that and so, we've provided a list. And -- so that's a fairly long list of individuals but that's been provided.

And then, of course, we're supposed to be working with the Committee counsel on custodians and search terms. On custodians, we received, I think also on the 9th, an initial

designation of two custodians; one is the Chief Executive Officer of Johnson & Johnson. The other was an individual who's the, basically, the CEO in waiting.

And I sent some correspondence to Mr. Glasser right away saying we objected to that, that they would go right to the very top of the organization. And then, it was either yesterday or the day before, Mr. Glasser sent five other, I think five other names of individuals who they're demanding be custodians.

And just to give Your Honor a bit of refresher, you may remember that prior to the December 7th hearing, we had proposed five custodians who we thought would be the business people that would make sense for the Committee to target, and also would be the right ones for depositions; both custodians and depositions.

The Committee's not using any of those individuals and that's obviously their choice. Since the correspondence, we've had further discussions, both with the debtor and with J&J and I think on the custodians, notwithstanding, it seems to us kind of borderline improper to go right to the top of the organization and ask for their emails and other electronic communications.

But if we're talking about custodians only, we're prepared to do that. Now, we advised the other side, and I said this in Court -- or on that Court call that Johnson &

Johnson did not approve the restructuring of the bankruptcy. They weren't asked to do that. As a consequence, we think asking for documents from those two individuals is not going to produce much of anything responsive, if anything.

But we're prepared to do that, notwithstanding we've made that caution but really on the condition that if it turns out, as we suspect, that those custodians generate little, if any, documents that we don't get a further request saying, that didn't work and now, we want to add two or three other individuals.

So we do have a concern about that, but with that understanding, and also with the further understanding that we don't agree and would oppose any effort to depose the Chairman or the CEO and the CEO in waiting under the Apex Doctrine and I think we've communicated this, we would oppose that. We think that's highly inappropriate and so, we just want to make very clear on the record that by agreeing to have them serve as custodians, we are not at all agreeing that they are proper deponents and we would oppose that.

So on basically those -- that condition and that understanding the condition being that if you don't get much of anything, you can't come back. It's your choice, but with the understanding also that we're not agreeing that those individuals should be the subject of depositions. If they want to go forward on that basis, fine.

On the search terms, Your Honor may remember that we had indicated we were going to run hit -- what we call hit reports. I think Your Honor probably knows what those are.

THE COURT: Sure.

MR. GORDON: I'm not that conversed in the lingo. I think that's what they're called. Anyway, we'd run the search terms against, I believe, five potential custodians and see what results we got and then, have a further dialogue with the other side.

And I think we expressed to Your Honor we had a concern about the general nature of the search terms, like talc and words like market and things like that.

So we ran those searches. We provided the hit reports to the other side. And I don't have the exact numbers in front of me, but my memory is that there were six that came back with high numbers of hits. And -- so we basically indicated to the other side, we thought those six terms should be excluded and we'd go forward with the rest.

Where we are is the response that came back was, well, we agree on the one; and I think it was the term, market. We don't agree on the other five. And where we are on those, and I guess we'll see what Mr. Glasser has to say, I can get you the precise numbers. But two of the five, the numbers were like in the tens of thousands, as I remember, like 25,000, 35,000 hits.

The other three were less than that, more in like the 5,000, maybe the 10,000-range. Again, I'm approximating. But our view is nonetheless that all of them should be excluded because even the ones at the lower numbers, we checked responsiveness, and they were a hundred percent -- the hits were one hundred percent non-responsive.

So in our view, given the time period that we're in, you know, it's obviously a fairly short time period, it doesn't make sense, we don't think, to run those search terms.

So those six were still of the view -- well, five of the six --

THE COURT: Five of the six.

MR. GORDON: -- they've agreed to one, so five of the six, we think should still be excluded. We'll obviously do whatever we're directed to do. And then, the only other thing I wanted to say, Your Honor, is, and I think I said this before, this is a transaction where at the virtual initiation of the case, we provided all the transaction documents. The other side, and you've seen it in their pleadings, they know exactly what happened, they know what every step was. They've obviously already built their arguments on what's wrong with the transaction, what its consequences are.

And so, we believe they have virtually everything they need and we also believe that the facts aren't going to be in dispute. We're going to dispute what the facts mean under

the applicable standards.

But the other thing, and so I'm just trying to provide the context, but the other thing is, we know that lawyers were involved, there's going to be significant privilege issues and -- I'm just going to sort of put this out there that we don't believe that these searches that we're doing are going to produce much of any helpful non-privileged information and we're probably going to have significant disputes, I would guess, or negative reaction to the fact that you've produced so few; why are there so many documents on the privileged list.

But that's sort of the nature of where we are and they were spending a lot of time, we think, responding to these requests and we'll do the best we can but whether it will elicits much in the way of meaningful response of information, we're very skeptical of that.

Just let me think, Your Honor, if there's anything else that I want to raise. I think that's fundamentally it. Obviously, I'll listen to what Mr. Glasser has to say but I did want to kind of set the framework and wanted Your Honor to know that we did comply with the direction that Your Honor gave us and we're making progress but there are, you know, are still open issues that have to be addressed.

THE COURT: All right. Thank you. Now, we also set a -- like a follow up -- was that the 3rd or 4th?

MR. GORDON: I believe it was January 3rd.

THE COURT: Third, yeah.

MR. GORDON: I forget the exact time. It might have been 2 o'clock.

THE COURT: Probably 4 o'clock or --

MR. GORDON: Yeah, some time in the afternoon, I believe.

THE COURT: -- yeah, all right.

MR. GORDON: Yes.

THE COURT: Thank you.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you, Counsel.

Mr. Glasser?

MR. GLASSER: Thank you, Your Honor.

THE COURT: You're welcome.

MR. GLASSER: Let me first address the custodian issue. So as Your Honor will recall, you asked them to produce the list of people essentially involved in the transaction who were important enough to have signed these NDAs, or have made the actual official decisions on the documents.

We got that list from them. It was approximately 135 people long. So I wrote back and I said, could you please give me three or four words on each person for what they actually did, because I have been limited to choose seven custodians from the Court out of 135 people who did this deal and I don't

know what they did. I don't know who they are and the debtors refused to give me those answers, so I picked seven.

I obviously picked people that I believe would have to be a fulcrum of something important, because if I have to guess, I want to guess about a fulcrum, not a capillary. So that's how we picked the seven. So I don't think conditioning -- what the Court said at the last hearing is, let's do the seven, let's see what you find out, take your three depositions and then, we'll report back on the 3rd and we'll discuss whether more custodians are needed or not needed or whether its fair or where we are.

And so, I don't think I ought to be required to accept the condition. I'm not saying we want to depose those people. I'm saying we want to look at their documents and we want to see who did what. And the seven we picked were the, you know, the CEO and the incoming CEO, the head of consumer health, the head of finance, the project leader for the thing, the public affairs person who's dealing with issues of talc and the treasurer who signed some of the deal documents.

Those were, in my view, a fair guess as to seven people who ought to be at least somewhere in the air traffic control system, getting important things. But until I see the documents and take these depositions, I really am not in a position to agree to conditions and I don't think it's -- I think it's premature to ask that we have to.

So that's the custodian issue, Your Honor.

THE COURT: Is it your intention -- they identified five custodians that they believe would be responsive to your needs.

MR. GLASSER: Yes, sir.

THE COURT: So are you putting them aside?

MR. GLASSER: Well, you know, my view is, Your Honor, if they want to call a witness to the stand, and those are probably be their five witnesses, they're going to have to produce their documents and they're not going to be able to say, gotcha, the Court held you to seven custodians; you'd never get their documents, you have to -- they get to testify and you don't get to know anything.

That would be supremely unfair. So if those are their five witnesses, I urge them to run the searches and produce their documents.

THE COURT: All right. Continue. Thank you.

MR. GLASSER: Now, let's talk about the searches. I got a letter that said, we're only going to search business email; we're not going to look at written notes; we're not going to look at handwritten documents; we're not going to look at their texts; we're not going to look at any slack or instant messaging in the company.

I think that's completely unfair, Your Honor. The normal way that you produce documents in a case is you do your

search -- your ESI search across all your devices and you produce -- you know, if somebody keeps a notebook like this, you have the lawyer look and see if there's notes on the topic.

And so, I don't think that limitation that they're proposing is fair and I'd like the Court to, well, frankly, Your Honor, I'd like you to say that it's unfair and they should search all their devices. That's a normal ESI search. It's only seven people.

Now, as to the searches themselves, counsel is correct that there was a hit. They searched their five custodians and they hit on the word, market, like 40,000 documents. And so, we said, fine, you can get rid of that.

The next biggest one was the word, stay. And we have a theory of the case that there's been a misuse or a goal to misuse the breath of a stay as a litigation tactic which is relevant under the SGL case. And that yielded 37,000 documents. Your Honor, that is an inconsequential number of documents to our law firm, to the -- to our law firms here.

We can literally look through 40,000 documents in a weekend. That's the next highest hit. The ones below that, the one next below that was 25,000 documents. And then, you're in to 6,000 documents, 4,000 documents, 2,000 documents. It's nothing.

So our position was fine, we'll get rid of the big one. The second biggest one is actually a relevant term. It

is 40,000 documents, 37,000 documents, but it is a super relevant term for the case. And we can easily review that many. So we'd like you to produce those. And then, the rest are so small as to be inconsequential in our view.

So that's why we stood pat on the search terms beneath the market term which I do think is too broad because maybe it's a market for a produce; maybe it's a market for this; a market for that. So that's why we put the line where we did, Your Honor.

Now, there is another issue which is, for example, we sent a specific request on Royalty A and M. The Court will recall that Royalty A and M is the royalty vehicle that got these streams of royalties through five transactions with McNeil, with J&J CI. They bought royalty streams that the debtor has valued on their slides today at $373 million.

We sent a discovery request that said we would like the evaluations that cause you to believe it's $373 million, relevant to the motion to dismiss, if it's intentionally underfunding the debtor.

The response is, we need to see your custodians and do the searches and see, basically, see if the searches turn up the valuation. That is not the purpose of the searches or the custodians. Independent requests for valuations that are perfectly relevant to this case, they ought to go find the valuations and produce them, no matter which custodian had the

valuations.

So conditioning the production of documents on the choice of custodians is likewise not fair and is asking us to do needle in haystack work instead of getting the documents that everyone agrees in the case are super relevant like the valuation of the royalty stream.

So the second thing that is a meta issue between us is they think that the custodian choices cabin what should be produced on every essential request for production and we disagree with that. If it's a clear request for production for an ascertainable thing, it doesn't matter who the custodian was, whoever did that valuation, whoever got that valuation. It should be produced irrespective of our search for the key people's knowledge through the custodial searches. So that is a major issue, Your Honor, that will impede discovery.

And the third, and this is my last one, and we could -- and the third is, for example, this is another one where, to me, the custodians don't matter; they put a slide up in the presentation today explaining how the cash moved in the company and who paid the Ingham verdict. They said it was JJCI who paid it.

One of our requests, request number 44 is, give us your account control agreement with your bank that moves the cash on a daily basis, among all these companies. Frankly, Your Honor, I want to see if JJCI has an independent right to

draw cash or not without the permission of J&J under those account control agreements.

They refuse to produce them. I don't understand how we can have a bankruptcy case about which entity is in charge of which money and not see account control agreements. It seems super relevant to understanding the movement of money among the debtor, JJCI and J&J and they put an example of it on the board but won't give me the documents to truth test it.

So those are my three big issues. One, that the searches ought to be, you know, more than just business email; it ought to be all devices and physical notes. Two, that it's not proper to link specific requests for specific ascertainable documents to who the custodian was, the example being, those valuations. And three -- and also that -- those account control agreements. Those are two great examples of where the custodian doesn't matter. It's just a relevant document to the case that we asked for with very much specificity. That ought to be produced.

Oh, and that's it, Your Honor. The only thing I'll say about the review you're going to do in-camera is, if it is something that's not relevant, there is a confidentiality order in this case and to the extent they're choosing relevance choices and just blacking things out, it's better for them, it's better for everyone's, like, trust in each other, to just produce it subject to the confidentiality order.

I mean, if it were like, hey, we're going to buy another company, it's an M&A problem, I get that. But in general, that's what the confidentiality order is for, not for parties to just choose to black out everything because they think it's not relevant.

THE COURT: All right.

MR. GLASSER: Okay. Thank you, Your Honor.

THE COURT: With respect to the hits --

MR. GLASSER: Yes, sir?

THE COURT: -- and you used an example, stay?

MR. GLASSER: Yes, sir.

THE COURT: Are you telling me there's not a way of refining it with --

MR. GLASSER: So when we --

THE COURT: -- by employing additional word, like, automatic or bankruptcy?

MR. GLASSER: -- so when we put the word, automatic, it --

THE COURT: Yup.

MR. GLASSER: -- gave one hit. I just, people colloquially pry when their email, and they're not saying automatic stay; they're saying, stay the cases, stay this. If we added on, when we -- we tried that. When we added automatic, we got one hit out of 37,000.

THE COURT: All right. Thank you.

MR. GLASSER: Thank you, Your Honor.

THE COURT: Mr. Gordon, response?

MR. GORDON: Yes, Your Honor.

On the issue of the extent of the ESI search, what I had understood and what was objectionable to us, is that, for example, with Mr. Gorsky, the CEO of Johnson & Johnson, they're asking that we get his phone, that we pull all the texts off his phone and review those, that we look at any voice messages that are on his phone; things like that.

That, to us, seems highly inappropriate. He represented to you, Mr. Glasser did, that that's the way these e-searches are always done. I talked to our litigators. They're not the way these are done, typically, from our experience in commercial disputes. I mean, maybe if this were a -- some sort of harassment case or something and you were targeted on a specific individual.

But to ask the debtor to go to Johnson & Johnson, the ultimate parent, and tell the Chairman that he has to give us his phone and we're going to take all the data off his phone and review it. That seems to us to be over the top so we did object to that.

On the --

THE COURT: What other business devices are employed, I mean, although we have iPads, we have laptops, all right. Through which devices, have you undertaken searches?

MR. GORDON: -- well, I think, you know, fundamentally, it's the computers at the office, laptops, whatever it would be. I don't have the precise answer --

THE COURT: Right.

MR. GORDON: -- to that. If you give me five minutes, I can probably get the answer to that, but we're certainly prepared to look at all the devices on which business communications would appear. But to ask someone to, again, hand over their phone to us, seems to go over and above what's appropriate.

Well, I'm not sure I have anything to add on the search terms. It was interesting on the stay, we -- that's what we proposed as an alternative, was to use the term, automatic stay, and that wasn't acceptable. But it still comes down to us -- there are pretty substantial numbers of hits and on the lower end ones, there was literally no responsive documents. We were trying to avoid that. But again, we'll comply with whatever directive Your Honor gives us.

On the valuation of the subsidiary, I think on that there may be a miscommunication. I don't think we ever said -- if there was a specific request, and I don't have the requests in front of me, for a valuation of that subsidiary, I don't think we ever said, we're only going to give it to you to the extent it shows up in ESI.

What we would have said was, a lot of these requests

said, we want the document and all communications related to the document. And I think what we said was, when you're asking for communications, that'll be whatsever [sic] generated from the reports. We're no going to endeavor, because that's a huge task to try to come up with all communications related to certain documents and that's the way a number of their requests read.

THE COURT: And on the account control agreement?

MR. GORDON: Well, I think what Mr. Glasser is referring to is the concentration account among Johnson & Johnson and its affiliates. The reason we didn't think that was appropriate is that LTL is not a party to it.

And so, what he's fundamentally asking, and I haven't followed the argument when it's been made is, he wants to see how the money moves and he wants to see whether entities are real or not real; that's the terms he's used with me.

Well, these are all non-debtor entities. So I don't really know -- I don't understand what the connection is. It'd be one thing if LTL were a party to it, but LTL is not. So we just don't understand what the relevance is providing the concentration account agreement.

The only other comment I should make, Your Honor, because I didn't make it before, is on the custodians. And again, we indicated we're willing to go with their list of custodians. They obviously don't trust us and that's fine, you

know, that's their prerogative.

I would point out that Mr. McCann, who is on their list, he's not a lawyer but he's in the Legal Department. He's like a project manager. And so, he in particular is likely to generate a significant amount of privileged communications, we suspect.

So I'm just putting it out there. We're not resisting that because he's not a lawyer and, you know, we appreciate the fact there are not lawyers on the list, but he is a project manager, so it's closer to the line on that.

THE COURT: All right.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you.

As far as the searches, they should be conducted on all business devices. I will exclude personal telephones, but laptops, iPads, business desktops; we all work through those. The phones, I think, is a step too far at this juncture.

Provide the documents for the seven custodians they have identified. We're going to talk about who is being deposed. I doubt you're getting to it before January 3rd. You're going to be fortunate to complete the three that you have on tap.

I will tell you, I am circumspect and have serious reservations about depositions of the top. I think we all share, and with no disrespect to anyone, that the top doesn't

always really know, have valuable information.

If documents demonstrate a reason, great. If you haven't filed documents that point to a reason to take a deposition of anybody, save time. Point it in the right direction. We'll take about it on the 3rd, I guess.

Produce the valuation documents, not communications. We'll leave the communications to see if the search terms -- be creative with search terms. See if you can narrow it down for those who have to review it as well as produce it. It's in everybody's interest to refine it.

The same -- I'm not going to direct the account control agreement at this point. When you take your depositions, as I'm sure you will, you'll ask questions in that regard, regarding the flow of money as is relevant for the dismissal motion.

I mean, it's a narrow -- we're talking about, I guess, the funding agreement and the ability to honor the funding agreement. It has relevance. See what -- I guess, it's going to depend on who you are deposing in that regard.

We can revisit on the 3rd. Bu let's take this, as I've always said, in steps. I think I've -- I don't know if there's any other immediate concern.

I'll look at the document. I agree with, as far as the confidentiality, obviously if it -- if there's -- if the information's been blackened out here, if it looks to me to be

privileged, I'm not going to authorize it. If it's subject to a confidentiality agreement, I assume that's -- that it can be produced. If it looks to me that there's other concerns, such as transactions that shouldn't be -- that are wholly irrelevant, I'll take that into account too. I'll take a look at it.

There's enough for you all to look at the -- as far as documents that are just will have no bearing.

Anything else on discovery?

MR. GORDON: No.

MR. GLASSER: Just one item, Your Honor, if I may?

THE COURT: Yeah.

MR. GLASSER: I also mentioned that they should, I believe, look to ask the custodian, do you have physical notes, do you take notes, do you have a notebook and the Court didn't address that?

THE COURT: Yeah. I'm not ordering the disclosure of notebooks.

MR. GLASSER: Okay.

THE COURT: Thank you.

Ms. Jones?

MS. JONES: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. JONES: Laura Davis Jones of Pachulski Stang Ziehl and Jones, on behalf of Arnold and Itkin. Your Honor, I

rise only to advise your Court as I think you know, that we filed a motion to dismiss as well.

Your Honor, we are actively trying to get into the discovery loop. I thank the TCC who responded immediately to us and brought us into the loop for getting us documents, have given us their discovery that they issued and so forth. So we're moving forward.

A bit more delay from the debtor, but yesterday we did at least receive a phone call so I'm hopeful that we'll be able to move forward on that.

Your Honor, we are going to try to integrate as efficiently as possible into the scheduling. This discovery that's already scheduled, the issues have already been discussed and so forth.

But, Your Honor, I did want to stand and reserve my rights in case we have issues that are not raised by the TCC or not raised by the debtor with respect to discovery. We may be back before the Court.

THE COURT: You're welcome to join us on the 3rd or at other times. Thank you.

MS. JONES: Thank you, Your Honor.

THE COURT: Mr. Gordon?

MR. GORDON: Your Honor, Greg Gordon again. The only point -- the only reason I rise is over the minutes, the board minutes. I haven't had a chance, obviously, to confer with the

client or with J&J about that.

I just would note, obviously I heard that we have a protective order, we can do that. But we're talking about minutes of the ultimate J&J board. There may be added sensitivity around those. I don't know the answer to that, but I'd at least like an opportunity to confer with our client to see.

THE COURT: I won't mentor any ruling on it for the next couple of days. So if there's a reason, if you need to supplement any objection, just send the Court a letter.

MR. GORDON: Thank you, Your Honor.

THE COURT: All right. And if we need, we'll have a call.

MR. GORDON: Thank you, Your Honor.

THE COURT: All right.

Now, Ms. Cyganowski, you needed about 15 minutes?

MS. CYGANOWSKI: Yes, sir.

THE COURT: All right. Guys, time flies. It's ten to one. Can we do it by five after 1, or do you need more?

MS. CYGANOWSKI: How about 1:15?

THE COURT: 1:15. I'll change my tee time.

All right, folks. Thank you.

(Recess from 12:51 p.m. until 1:18 p.m.)

THE COURT CLERK: For those of you still on the Zoom, we are not going to resume hearings this afternoon. So these

proceedings have concluded.

* * * * *

C E R T I F I C A T I O N

We, KAREN WATSON, DANA KELLY and TRACY E. VERGOLLO, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Karen Watson

KAREN WATSON

/s/ Dana Kelly

Dana Kelly

/s/ Tracy E. Vergollo

TRACY E. VERGOLLO

J&J COURT TRANSCRIBERS, INC. DATE: December 16, 2021